BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
PRINCIPAL BENCH, AT NEW DELHI
O.A. NO. 165 OF 2024

IN THE MATTER OF:

ACHHRU RAM SHARMA .....APPLICANT

VERSUS

STATE OF PUNJAB & ORS. ..... RESPONDENTS

NDOH:

INDEX

FILED BY:

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REPLY ON BEHALF OF THE APPLICANT TO THE AFFIDAVIT FILED BY RESPONDENT NO. 3 I.E. M/S. AP REFINERY PVT. LTD.

MOST RESPECTFULLY SHOWETH:

1. That the present captioned Original Application has been filed by the Applicant and the same is pending adjudication before this Hon'ble Tribunal and is now listed for hearing on 10.07.2026. This reply is being filed in pursuant to the order dated 10.03.2026 passed by this Hon'ble Tribunal.

2. That at the outset, the Applicant herein denies each and every statement and contentions set forth in the affidavit to the extent the same are contrary to and/or inconsistent with the true and complete facts of the case. That the Applicant herein further humbly submits that the averments and contentions, as stated in the affidavit filed by the Respondent No. 3, may not be taken to be deemed to have been admitted by the Applicant herein, save and except what are expressly and specifically admitted and the rest may be read as travesty of facts.

3. **PRELIMINARY OBJECTIONS AND SUBMISSIONS:**

A. THE AFFIDAVIT OF RESPONDENT NO. 3 IS MISCONCEIVED, MISLEADING AND AN ATTEMPT TO DIVERT ATTENTION FROM THE CORE ENVIRONMENTAL ISSUES:

a. At the outset, it is submitted that the affidavit filed by Respondent No. 3 deserves to be dismissed as being wholly misconceived, misleading and contrary to the record. The affidavit is a calculated attempt to shift the focus of the present proceedings away from the serious environmental concerns which form the subject matter of the Original Application and instead seeks to portray the dispute as a consequence of alleged business rivalry and company disputes. Such an approach is wholly impermissible. The present proceedings arise out of allegations concerning contamination of groundwater, illegal discharge of untreated industrial effluent, reverse boring and consequent environmental degradation affecting residents of several villages. The Respondent, instead of addressing these substantive issues, has chosen to fill its affidavit with allegations regarding company litigation and commercial competition which are wholly irrelevant for adjudication of the environmental Issues before this Hon’ble Tribunal.

b. It is submitted that the Original Application was not filed on account of any private grievance, commercial rivalry or personal dispute. The same was instituted after serious reports emerged in the public domain regarding environmental violations allegedly being committed by Respondent No. 3 and after widespread concern was expressed by villagers residing in the surrounding area. The

Applicant approached this Hon’ble Tribunal in discharge of his obligation as a responsible citizen and stakeholder upon becoming aware of allegations that untreated trade effluent generated by Respondent No. 3 was being discharged onto land and that illegal reverse boring activities were allegedly being undertaken, resulting in contamination of groundwater used by villagers for drinking, domestic and agricultural purposes

c. It is submitted that the genesis of the present proceedings lies in widespread complaints and concerns raised by villagers and local residents, which were reported through social media platforms, video reports and newspaper publications. These reports highlighted allegations of environmental degradation and groundwater contamination allegedly caused by the activities of Respondent No. 3.

d. The factual matrix leading to the filing of the present Original Application is that several social media reports, videos and newspaper articles came to the knowledge of the Applicant wherein villagers residing in and around Village Tapar Harnia and adjoining villages alleged that Respondent No. 3 was contaminating groundwater and violating environmental norms by discharging untreated industrial effluent and carrying out reverse boring activities. **Copies of the videos, news-articles/screenshots of social media reports being circulated are already annexed as Annexure-1 (Colly) @ page no.30 to 42 of the court file).**

e. It is further submitted that the reports and videos circulating in the public domain depicted widespread agitation and protests by villagers owning agricultural lands around the Respondent Industry as well as residents of villages namely Tapar Harnia, Leelan, Sherpur Kalan, Sherpur Khurd, Shekh Daulat, Bodalan Wala, Ramgarh Bhullar and other adjoining areas. The villagers had reportedly staged dharnas and public demonstrations alleging that the operations of Respondent No. 3 were resulting in discharge of huge quantities of untreated industrial effluent onto land and that illegal reverse boring activities were being undertaken for disposal of industrial waste. The villagers expressed serious apprehensions that such activities had been continuing for a considerable period of time, resulting in contamination of groundwater and causing damage which may require extensive environmental remediation. The reports further suggested that the concerned authorities had failed to take appropriate action despite repeated complaints.

f. It was also brought to the notice of the Applicant through the aforesaid reports and complaints that the Effluent Treatment Plant (ETP) installed within the premises of Respondent No. 3 was allegedly inadequate, inefficient and not operating in accordance with environmental norms. The allegations suggested that the industry was using bypass arrangements and other means to avoid proper treatment of industrial effluent and that untreated wastewater was being discharged onto land available within and outside the industrial premises. It was further alleged that the system adopted by the industry was incapable of handling the quantity of effluent being generated, resulting in stagnation of untreated wastewater and seepage of contaminants into the groundwater aquifers.

g. That as per the said social media/news articles reports/videos the villagers had filed a Complaint with the Respondent State Pollution Control Board pertaining to the Respondent Industry causing contamination of groundwater and violation of environmental laws about a year ago however, Punjab Pollution Control Board did not take any action against the Respondent Industry in fact in connivance with the current management of the Respondent Industry, the Respondent Pollution Control Board has given a clean chit to it. That it is further alleged in the said social media/news articles reports/videos that the Respondent Pollution Control Board has willingly turned a blind eye to the illegal actions of the Respondent Industry and in furtherance have in fact facilitated the contamination of groundwater being caused by the Respondent Industry.

h. The social media reports and videos further depicted tube-wells and borewells in the vicinity allegedly discharging coloured and foul-smelling water. The villagers expressed apprehension that groundwater contamination had reached such an extent that the water extracted from borewells was no longer fit for human consumption, livestock use or agricultural purposes. The reports also highlighted concerns regarding possible adverse impacts upon public health, cattle and stray animals residing in the area. These allegations, whether ultimately proved or disproved, were serious enough to warrant investigation by competent authorities and justified the filing of the present Original Application.

i. That anxiety of the Original Applicant due to which the present Original Application has been filed needs to be brought out before this Hon'ble Tribunal. Firstly, in view of fact that the groundwater around the Respondent Industry stands allegedly polluted due to acts of omission and commission on the part of the present directors/officials of the Respondent Industry which as per the social media allegations are ignored and even covered up by the Respondent No. 1 i.e. Government of Punjab and the Respondent No. 2 i.e. Punjab Pollution Control Board in connivance with the influential directors having long pockets of the Respondent Industry and once finally the truth comes out, in all likelihood these illegal acts may result into imposition of huge environment compensation on the Respondent Industry. Additionally, the Authorities concerned filing criminal complaint for prosecution of the directors of the Respondent Industry cannot be ruled out.

j. That the Applicant herein along with his associates are major stakeholders in Respondent No. 3 Industry, namely M/s A.P. Refinery Pvt. Ltd. Having its registered office as well as factory premises at Tapar Harnia, Nakodar Road, Jagraon, Ludhiana, Punjab.The Company was incorporated on 01.08.2003 and is engaged in activities relating to manufacture and processing of rice bran oil and allied products. However, the Applicant was never involved in the management, control or day-to-day functioning of the Company. The affairs of the Company were at all material times controlled and managed by the present directors, namely Mr. Ravi Nandan Goyal, Mr. Shiv Kumar Goyal, Mr. Arun Kumar Goyal and Mr. Bhuwan Goyal.

k. That A.P. Refinery Pvt. Ltd./ Respondent No. 3 was incorporated on 01.08.2003 to manufacture and supply crude rice bran oil to A.P. Solvex Ltd. which is in the business of solvent extraction, refining and supply of refined rice bran oil. The Respondent Industry started refinery plant with an initial capacity of 75 tonnes per day. Which was further expanded to capacity of over 250 tonnes per day. The plant also has solvent extraction capacity of over 400 tonnes per day and a modem oil mill with expelling capacity of 80 tonnes per day.

l. It is pertinent to note that the Applicant and his associates originally held majority shareholding to the extent of 56.97% in Respondent No. 3. However, by means of illegal and fraudulent allotments and transfers of shares undertaken by the existing management, the Applicant's shareholding was reduced to a minority position. These actions gave rise to proceedings before the Hon'ble National Company Law Tribunal in C.P. No. 146(ND) of 2012 wherein allegations of oppression, mismanagement and falsification of records were raised against the present management.

m. The Hon'ble National Company Law Appellate Tribunal, New Delhi, vide judgment dated 16.04.2019 in Company Appeal No. 394 of 2017, allowed the appeal preferred by the Applicant and restored the shareholding of the Applicant and his associates to 56.97% by holding the impugned allotments to be illegal. **Copy of Order dated 16.04.2019 is already annexed with the O.A. as ANNEXURE-2 @ page no.43 to 96 of the court file.** The said judgment continues to operate and no stay has been granted by the Hon'ble Supreme Court against the operative directions contained therein.

n. That thereafter, the Applicant herein and his associates filed Execution Application bearing C.A. No. 722 of 2019 in C.P. No. 146(ND) of 2012 before Hon'ble National Company Law Tribunal, Chandigarh Bench praying for execution of the order dated 16.04.2019 passed by Hon'ble NCLAT. That Hon'ble National Company Law Tribunal, Chandigarh vide order dated 03.06.2022 directed the Respondents therein to comply with the directions passed by Hon'ble NCLAT in its judgment/order dated 16.04.2019. **Copy of Order dated 03.06.2022 are already annexed with the O.A. as ANNEXURE-3 @ page no.97 to 115 of the court file.** It is pertinent to mention herein that despite the aforesaid directions even as of today the management of the Respondent Industry still completely vests in the hands of the abovenamed directors.

o. That the Respondent No. 3, being aggrieved by the order dated 03.06.2022 passed by the Hon'ble National Company Law Tribunal, Chandigarh Bench, preferred an appeal before the Hon'ble National Company Law Appellate Tribunal, New Delhi. The said appeal was dismissed by the Hon'ble NCLAT vide order dated 06.05.2024, whereby the order dated 03.06.2022 passed by the Hon'ble NCLT, Chandigarh Bench, directing compliance with the judgment/order dated 16.04.2019 passed in Company Appeal No. 394 of 2017, was upheld. **A copy of the order dated 06.05.2024 passed by the Hon'ble NCLAT is annexed herewith and marked as Annexure-A.** That thereafter, the Respondents preferred Civil Appeal No. 6317 of 2024 before the Hon'ble Supreme Court of India challenging the order dated 06.05.2024 passed by the Hon'ble NCLAT, along with an application seeking stay of the operation and effect of the said order. The matter was listed before the Hon'ble Supreme Court on 17.05.2024; however, no stay was granted against the operative directions contained in the order dated 06.05.2024 passed by the Hon'ble NCLAT. **A copy of the order dated 17.05.2024 passed by the Hon'ble Supreme Court is annexed herewith and marked as Annexure-B.** The said Civil Appeal is presently pending adjudication and is likely to be listed for hearing on 29.07.2026.

p. That despite the orders passed by the Hon'ble NCLAT and the Hon'ble NCLT, Chandigarh Bench, and the absence of any stay against the said directions, the Respondents have failed to comply with the mandate of the said orders and have not restored the majority shareholding and consequential management rights of the Applicant and his associates in Respondent No. 3 Company. That owing to the continued non-compliance of the orders passed by the Hon'ble NCLAT, the Applicant and his associates were constrained to initiate contempt proceedings by filing Contempt Case (AT) No. 27 of 2025 before the Hon'ble National Company Law Appellate Tribunal, New Delhi. The Hon'ble NCLAT, vide order dated 07.10.2025, was pleased to issue notice to the Respondents in the said contempt proceedings. The said contempt proceedings are presently pending adjudication and are listed for hearing on 10.07.2026**. A copy of the order dated 07.10.2025 passed by the Hon'ble NCLAT is annexed herewith and marked as Annexure-C.**

q. The aforesaid facts clearly demonstrate that the Applicant was never involved in the day-to-day functioning, management, decision-making process, environmental compliance obligations or operational activities of Respondent No. 3. Consequently, the Applicant has no access to the internal records of the Company, including environmental permissions, consents, approvals and operational data. The Applicant's concern regarding possible environmental violations arose only after the reports and complaints referred to hereinabove came into the public domain.

r. It was while examining the status of the Company and its operations that the Applicant came across the various news reports, social media posts, video recordings and complaints alleging contamination of groundwater and violation of environmental laws by Respondent No. 3. These reports gave rise to a bona fide apprehension regarding the environmental consequences of the activities allegedly being undertaken by the present management of the Company and necessitated the filing of the present proceedings.

s. The facts narrated hereinabove, coupled with the orders passed by the Hon'ble NCLT and Hon'ble NCLAT, clearly establish that the Applicant has no role whatsoever in the management or operation of Respondent No. 3 and cannot be held responsible for any environmental violations, if ultimately found to have occurred. The Applicant approached this Hon'ble Tribunal not to settle any commercial dispute but to ensure that the allegations concerning groundwater contamination and environmental degradation are independently investigated and that responsibility, if any, is fixed upon the persons actually managing and controlling the affairs of the Respondent Industry. The affidavit filed by Respondent No. 3 seeks to deliberately obscure these facts and divert attention from the environmental issues which alone require adjudication by this Hon'ble Tribunal. The same therefore deserves to be dismissed and no adverse inference ought to be drawn against the Applicant on the basis of the allegations contained therein.

B. <u>THE RELIANCE PLACED BY RESPONDENT NO. 3 ON THE JOINT VISIT REPORT DATED 06.07.2023 AND THE JOINT COMMITTEE REPORT DATED 02.07.2024 IS MISCONCEIVED, MISLEADING AND DOES NOT AMOUNT TO FINAL EXONERATION:</u>

a. The Applicant submits that the Joint Visit Report dated 06.07.2023 and the Joint Committee Report dated 02.07.2024, as relied upon by Respondent No. 3 in the present affidavit, are reports prepared pursuant to directions issued by this Hon'ble Tribunal for the limited purpose of assisting in fact-finding. The said reports are in the nature of technical and expert assessments conducted at site and are intended to aid the adjudicatory process, rather than substitute it.

b. The Applicant submits that the Joint Visit Report dated 06.07.2023 records certain observations with respect to groundwater quality parameters such as Iron, Manganese, Calcium Hardness and Total Dissolved Solids (TDS) in borewell samples collected during inspection. The report notes that the elevated levels of certain parameters may be attributable to geogenic conditions and general characteristics of groundwater in the region.

c. It is further submitted that the said observations are based on sampling conducted at the time of inspection and therefore represent a snapshot of the conditions prevailing on that particular date. Groundwater quality, being a subsurface and dynamic environmental component, is influenced by multiple factors including industrial discharge, agricultural practices, soil composition, hydrogeological conditions, and seasonal variations. Accordingly, isolated observations or single-time sampling require to be assessed in conjunction with broader temporal and spatial data for arriving at a comprehensive conclusion.

d. The Applicant further submits that the reference in the Joint Visit Report to generally elevated TDS levels in certain parts of Punjab is a broad regional observation. While such observations may provide contextual background, they do not, by themselves, determine the presence or absence of localized impact attributable to a specific industrial unit operating in a defined area. The assessment of site-specific impact requires a detailed scientific evaluation of discharge pathways, effluent treatment performance, and subsurface migration of contaminants in the immediate vicinity of the unit.

e. That in compliance of the order dated 21.02.2024 passed by this Hon'ble Tribunal, the Joint Committee filed its report on 02.07.2024 (uploaded on the website of the Tribunal on 08.07.2024). That the Joint Committee in its report gave a clean chit to the Respondent No.3 i.e. M/s A.P. Refinery Pvt. Ltd. by stating that "The industry was found complying with the environmental norms, hence there is no damage to the environment as alleged in the application". That the report of the Joint Committee does not depict the correct picture and seems to be based on a procured sample analysis report having been prepared to help the Respondent No.3 Industry.

f. It is submitted that the said conclusion does not depict the complete environmental situation in the area and appears to be based on limited parameters and selective sampling. Environmental conditions such as groundwater contamination and industrial effluent discharge are not static in nature and may vary depending upon operational conditions, production load, maintenance status of pollution control systems, and seasonal fluctuations in groundwater levels and flow.

g. It is further submitted that while the Joint Committee Report addresses certain parameters of effluent and groundwater, the scope of analysis appears to be confined to selected indicators and limited sampling points. The issues raised in the Original Application, including seepage of untreated effluent into land, adequacy and operational efficiency of the Effluent Treatment Plant, possible bypass mechanisms, and long-term impact on subsurface water quality, require a more comprehensive and scientific assessment.

h. It is further submitted that the report filed by the Joint Committee, at page 129 of the court file, analysis of wastewater samples collected from inlet, aeration tank-1, aeration tank-2 and final outlet of ETP of the industry has been recorded. That below the analysis table, the Joint Committee states that "Results of samples were found to be within the prescribed limits".

i. However, the Joint Committee has failed to take into consideration that the parameters of TDS (Total Dissolved Solid) and SAR (Sodium Absorption Ratio) at the outlet of the ETP are beyond the prescribed limits. That the value of TDS at the outlet is 3407 mg/l as against prescribed limit of 2100 mg/l and that of SAR is 54.0 as prescribed limit of 26. That treated trade effluent having TDS 3407 mg/l is not fit to be discharged onto land for irrigation/plantation as being done by Respondent No.3 Industry, as effluent with high TDS when percolates into the ground water causes contamination of the same and makes the soil salinated and in the long terms can alter the chemical properties of soil, leading to soil structure degradation and reduced fertility. On one hand, the TDS values of the effluent being discharged for irrigation/plantation are far exceeding the prescribed limits, while on the other hand, the report claims that the groundwater parameters are within acceptable limits. Therefore, it seems that the report submitted by the Joint Committee does not inspire confidence. Further the parameters of SAR (Sodium Absorption Ratio) are also exceeding the prescribed limits. That effluent with high SAR is also not fit for irrigation/plantation. In general, the higher the SAR, the less suitable is the water for irrigation.

j. Further, the Joint Committee has not carried out and submitted analysis of Oil and Grease which is one of the main and basic parameters to be analysed while inspecting any refinery or oil industry. That the parameters of oil and grease have purposely not been analysed and submitted by the Joint Committee before this Hon'ble Tribunal, because if the same came out to be beyond the prescribed limits, then consequentially the values of BOD and COD would have been far beyond the prescribed parameters. Therefore, the Joint Committee has failed to perform its duty and responsibility in letter and spirit and has rather merely done a formality of carrying out an inspection. The industry does not have Dissolved Air Flotation (DAF) System installed and for such an industry it is almost impossible to control the parameters of Oil & Grease without installation of Dissolved Air Flotation (DAF) System.

k. That therefore, during the pendency of the present proceedings, the Applicant got the groundwater samples collected and tested from various places in and around the Respondent No.3 industry. That the sampling was carried out on 10.10.2024 by Chandigarh Pollution Testing Laboratory (NABET Accredited EIA Consultant). **Copy of photographs taken during sampling on 10.10.2024 are already annexed with I.A. No. 524/2024 as Annexure-A/4(Colly) @ page**

no.149 to 156 of the court file. The locations of sampling are as follows:

i. Borewell AP Refinery Major Dayal Singh House.
ii. Borewell AP Refinery Major Joginder Singh Ramgarh.
iii. Borewell Village Sherpura Kalana Shamsher Singh.
iv. Borewell Village Sherpura Kalana.
v. Supply Water Village Tappad Harnia.
vi. Supply Water Harjinder Singh.
vii. Borewell behind AP Refinery Tapar Harnian Jagraon.
viii. Plantation Area.

l. That as per the analysis report of the samples collected from the above locations, several parameters are exceeding the prescribed limits. That the parameters of BOD and COD from samples collected from the plantation area have been found to be far beyond the prescribed limits. That importantly, one of the parameters, namely lead (Pb), has been found far beyond the prescribed limit. The prescribed parameter for lead is 0.01 mg/l however the values of the same have been found to be 2.5 mg/l, 2.6 mg/l, 2.83 mg/l, 2.8 mg/l, 2.81 mg/l, 2.82 mg/l, 2.81 mg/l, 2.80 mg/l and 2.78 mg/l respectively at the locations mentioned above. That lead is highly toxic and its contamination in groundwater causes serious irreversible health hazards especially when it enters the food chain, leading to severe diseases including DNA damage in human beings. **Copy of one such news article stating the effect of lead and other heavy metals on human beings is already annexed with I.A. No. 524/2024 as Annexure-A/5 @ page no.157 to 160 of the court file.**

m. That further as per the sample analysis report, various other parameters such as TDS (at plantation area, hardness, magnesium, chloride, SAR (at plantation area, oil and grease, E.coli Bacteria have been found to be far beyond the prescribed limits. **Copy of the report dated 15.10.2024 of samples collected and analysed by Chandigarh Pollution Testing Laboratory (NABET Accredited EIA Consultant) is already annexed with I.A. No. 524/2024 as Annexure-A/6 @ page no.161 to 186 of the court file**. It is imperative to mention herein that the said analysis report clearly establishes that the groundwater in the said area within the plantation area of the Industry and area surrounding the Respondent No. 3 industry is highly contaminated with heavy metals and hence is a major health hazard for the people living in the near vicinity of the Respondent No. 3 industry.

n. Accordingly, it is submitted that the Joint Visit Report dated 06.07.2023 and the Joint Committee Report dated 02.07.2024, though forming part of the record of the present proceedings, are not conclusive determinations of compliance or environmental safety on the part of Respondent No. 3. The said reports are limited in scope, based on selective sampling and specific inspection visits, and therefore cannot be treated as final or exhaustive adjudication of the environmental issues raised in the Original Application. It is further submitted that in view of the subsequent material placed on record by the Applicant, particularly through I.A. No. 524 of 2024, a comprehensive, continuous and scientific appraisal of all environmental parameters is necessary for arriving at a just and correct determination of the issues involved in the present proceedings.

C. <u>THE AFFIDAVIT OF RESPONDENT NO. 3 FAILS TO DISCLOSE AND PROPERLY ADDRESS MATERIAL FACTS RELATING TO ONGOING ENVIRONMENTAL IMPACT AND ADEQUACY OF POLLUTION CONTROL MEASURES:</u>

a. It is submitted that the affidavit filed by Respondent No. 3 does not comprehensively address all the environmental concerns raised in the present proceedings and proceeds primarily on selective reliance upon certain observations and reports, without dealing in detail with the entirety of the issues raised by the Applicant in the Original Application as well as subsequent material placed on record.

b. It is submitted that the core grievance in the present proceedings pertains to alleged contamination of groundwater and discharge of industrial effluents affecting villages in the vicinity of the Respondent Industry. These issues are required to be assessed on the basis of actual field conditions, independent sampling, and continuous monitoring rather than relying solely on limited inspections or selective conclusions recorded in prior reports.

c. It is further submitted that the affidavit does not specifically address the operational aspects of the Effluent Treatment Plant (ETP), including its performance under varying load conditions, consistency of treatment efficiency, and the safeguards in place to prevent any bypass or release of untreated effluent. These aspects are relevant for a complete assessment of compliance with environmental norms and would require clarification supported by technical and operational records.

d. It is submitted that the affidavit also does not deal in detail with the issue of disposal of treated effluent onto land for irrigation and plantation purposes, particularly in the context of the parameters reflected in the analysis reports placed by the Applicant, which indicate that the environmental parameters exceed the prescribed standards for certain contaminants. The environmental implications of such disposal are required to be assessed in accordance with applicable standards and site conditions.

e. It is further submitted that the affidavit does not deal with the issue of long-term accumulation of pollutants in soil and groundwater systems, which is a critical factor in cases involving industrial effluent discharge. The impact of such discharge is not limited to immediate observations but extends over time and requires scientific evaluation through longitudinal data and repeated sampling.

f. Accordingly, it is submitted that the affidavit filed by Respondent No. 3 may be considered in conjunction with other material available on record, including the reports and documents placed by the Applicant, for a holistic assessment of the issues involved. The same therefore cannot be relied upon for drawing any inference of compliance or environmental safety, and the issues raised in the Original Application require adjudication based on comprehensive material and independent scientific assessment.

D. <u>THE ALLEGATION OF BUSINESS RIVALRY / MALAFIDES IS MISCONCEIVED AND IRRELEVANT TO THE PRESENT ENVIRONMENTAL ADJUDICATION:</u>

a. That the allegation raised by Respondent No. 3 regarding alleged business rivalry, mala fides, or extraneous motive on the part of the Applicant is wholly misconceived, factually incorrect, and legally untenable. It is submitted that no material whatsoever has been placed on record by Respondent No. 3 to substantiate the said assertion, and the same appears to be based on mere conjecture and presumption.

b. It is submitted that the Applicant has, at the threshold itself, made complete disclosure of all relevant facts pertaining to his association and shareholding interest, if any, in Respondent No. 3 Industry. The Applicant has not suppressed any material fact from this Hon'ble Tribunal. On the contrary, the pleadings and documents filed by the Applicant demonstrate transparency and full disclosure, thereby enabling this Hon'ble Tribunal to examine the issues in their correct factual perspective.

c. It is further submitted that mere prior association or shareholding, even if assumed for the sake of argument though not admitted, does not give rise to any presumption of mala fide intent or business rivalry, particularly in proceedings instituted in public interest concerning environmental degradation and statutory compliance. Environmental proceedings before this Hon'ble Tribunal are not adversarial commercial disputes but are proceedings in rem, aimed at protection of environment and public health.

d. It is submitted that there is no commercial competition, market overlap, or business rivalry between the Applicant's independent business interests and the operations of Respondent No. 3 which could remotely justify an inference of any personal or commercial motive in instituting or pursuing the present proceedings. The allegation of business rivalry is therefore not only unsupported by any material, but is also irrelevant to the environmental questions arising for adjudication before this Hon'ble Tribunal.

e. It is submitted that the genesis of the present proceedings lies in serious environmental concerns relating to alleged contamination of groundwater, improper handling and disposal of industrial effluents, and the resulting adverse impact on surrounding villages and agricultural land. These issues have been raised on the basis of reports, field observations, and material available in the public domain as well as subsequent technical sampling placed on record.

f. It is further submitted that the environmental concerns involved in the present matter are of a continuing nature and directly concern public health, soil quality, and groundwater safety. The adjudication of such issues necessarily requires examination of scientific data, regulatory compliance, and environmental impact assessment, rather than being diverted into questions of alleged personal motive or commercial interest.

g. It is submitted that even otherwise, under the scheme of the National Green Tribunal Act, 2010, the primary consideration before this Hon'ble Tribunal is the prevention and remediation of environmental harm and enforcement of environmental laws. Questions relating to alleged mala fides or business rivalry, unless supported by cogent material, cannot displace or dilute the Tribunal's obligation to examine the environmental issues on merits.

h. Accordingly, it is respectfully submitted that the allegation of business rivalry or mala fide intent is wholly irrelevant for adjudication of the present Original Application, is not borne out from the record, and deserves to be dismissed in limine.

E. <u>THE AFFIDAVIT FILED BY RESPONDENT NO. 3 IS BASED ON SELECTIVE RELIANCE AND NON-DISCLOSURE OF MATERIAL RECORDS:</u>

It is submitted that the affidavit filed by Respondent No. 3 proceeds on selective reliance upon certain favourable portions of reports and limited environmental observations, while failing to disclose or place on record the complete set of material records and data relevant for a fair and proper adjudication of the issues involved in the present proceedings. Environmental compliance, particularly in cases involving alleged groundwater contamination, industrial effluent discharge, and soil impact, cannot be assessed on the basis of isolated parameters, fragmented reports, or selective sampling results, but requires a holistic evaluation of all relevant environmental components including effluent quality at all stages of treatment, performance efficiency of pollution control systems, groundwater quality trends, soil contamination levels, and cumulative environmental impact over time. In the absence of such complete disclosure of material records and supporting technical data, the assertions made in the affidavit regarding compliance cannot be treated as conclusive or reliable for adjudication before this Hon'ble Tribunal, and the same therefore suffers from selective reliance and non-disclosure of material records.

F. <u>NECESSITY/REQUIREMENT FOR INDEPENDENT AND CONTINUOUS ENVIRONMENTAL MONITORING:</u>

It is submitted that the issues involved in the present proceedings relate to alleged long-term environmental impacts, including groundwater contamination, soil degradation, and possible impact arising from industrial effluent discharge, which cannot be conclusively determined on the basis of isolated inspections or one-time sampling exercises. The affidavit filed by Respondent No. 3 does not address the requirement of continuous environmental monitoring or independent periodic assessment of critical environmental parameters in and around the industrial premises and surrounding habitations. In view of the conflicting technical material already on record and the nature of allegations raised, a comprehensive and scientifically robust evaluation through independent and continuous monitoring assumes significance for arriving at a conclusion. Thus, in the absence of such continuous and independent environmental monitoring data, the assertions of compliance and environmental safety made by Respondent No. 3 cannot be treated as final or conclusive and the matter warrants examination through an independent expert mechanism under the supervision of this Hon'ble Tribunal.

<u>REPLY ON MERITS:</u>

1. That the contents of Para 1 of the affidavit need no reply from the Applicant being matter of record. The contents of the preliminary

objections/submissions and the above reply on merits are reiterated and not repeated herein for the sake of brevity.

2. That the contents of Para 2 of the affidavit need no reply from the Applicant being matter of record. The contents of the preliminary objections/submissions and the above reply on merits are reiterated and not repeated herein for the sake of brevity.

3. That the contents of Para 3 of the affidavit are a matter of record and hence need no reply from the Applicant. The contents of the preliminary objections/submissions and the above reply on merits are reiterated and not repeated herein for the sake of brevity.

4. That the contents of Para 4 of the affidavit are wrong, misleading and are denied in toto. It is denied that the present affidavit is being filed inter alia to collate and clarify material facts and submissions on the following two primary grounds (a) that Mr. Achhru Ram Sharma, who is the Complainant in the Original Application bearing O.A. No.165 of 2024 has suppressed material facts; and (b) the issue raised by the Complainant has already been decided by a Committee prior to the filing of OA 165 of 2024. It is submitted that the Applicant has approached this Hon'ble Tribunal with complete transparency and has placed on record all relevant facts within his knowledge, including the circumstances giving rise to the present proceedings, and there has been no suppression of any material fact whatsoever. The vague and unsubstantiated allegation of suppression is an afterthought, raised only to prejudice the adjudication of the environmental issues involved. It is further submitted that the so-called prior Committee reports or Joint Inspection Reports

relied upon by Respondent No. 3 are purely fact-finding in nature, do not constitute any adjudicatory determination. The issues raised in the present Original Application pertain to ongoing and continuing environmental degradation, including groundwater contamination and industrial effluent discharge, and therefore cannot be said to have attained finality on the basis of any earlier limited inspection or report. The contents of the preliminary objections/submissions and the above reply on merits are reiterated and not repeated herein for the sake of brevity.

5. That the contents of Para 5 of the affidavit are wrong and as such denied. It is denied that the O.A. No. 165 of 2024 has been filed by the Complainant, based on social media/newspaper reports/videos that have been circulated regarding purported pollution caused by Respondent No. 3, inter-alia, on the false premised that on account of the operations of Respondent No. 3 large quantities of untreated trade effluent is discharged onto land by it and reverse boring is carried out which allegedly results in contamination of groundwater. The Respondent No. 3 has deliberately attempted to trivialise serious environmental issues by terming them as “false premises”, which is denied. It is submitted that the present Original Application has been instituted on the basis of credible material including reports, videos, photographs, newspaper publications and complaints raised by villagers residing in and around the area of the Respondent No. 3 Industry, which disclose serious apprehensions of environmental degradation and groundwater contamination, and such material cannot be discarded merely on the ground that part of it originates from public domain sources when the

same forms the basis for environmental concern requiring examination under the jurisdiction of this Hon'ble Tribunal. It is further submitted that the issues raised in the present proceedings are not confined to mere media reports but relate to continuing environmental harm including alleged discharge of untreated industrial effluent, improper handling/disposal practices, and suspected contamination of groundwater being used for drinking, domestic and agricultural purposes by local residents. These issues require independent scientific examination by competent authorities under the supervision of this Hon'ble Tribunal and cannot be negated merely by a general denial. The contents of the preliminary objections/submissions and the above reply on merits are reiterated and not repeated herein for the sake of brevity.

6. That the contents of Para 6 of the affidavit are wrong, misleading and are denied. It is denied that the allegations regarding inadequacy and inefficiency of the Effluent Treatment Plant (ETP) are false or baseless. The Respondent No. 3 has sought to summarily deny serious allegations concerning the functioning of the ETP without dealing with the supporting material placed on record by the Applicant. It is submitted that the allegations raised in the Original Application pertain to the operational efficiency of the ETP, its adequacy in handling the volume and characteristics of effluent generated, and the possibility of non-compliant discharge including alleged bypass mechanisms leading to discharge of untreated or partially treated effluent onto land within and/or outside the industrial premises. It is further submitted that critical parameters such as Oil & Grease, which are fundamental for assessment of refinery/oil-based industrial effluents, along with complete inlet–

outlet performance data and continuous monitoring records of the ETP, have not been properly addressed in the affidavit, thereby rendering the claim of full compliance incomplete and unreliable. These are serious environmental concerns which require detailed verification through continuous monitoring of inlet-outlet parameters, inspection of treatment stages, sludge handling and disposal practices, and verification of safeguards against bypass arrangements. It is further submitted that improper or insufficient treatment of industrial effluent, particularly with high TDS/SAR characteristics as already evident from record, has direct bearing on soil quality and groundwater contamination when such effluent is applied for irrigation or allowed to percolate into land, thereby necessitating a holistic environmental assessment. Accordingly, such issues cannot be effectively adjudicated on the basis of a general denial by Respondent No. 3 and require independent technical assessment by competent authorities under the supervision of this Hon’ble Tribunal, particularly in view of the allegations relating to groundwater contamination and environmental degradation in surrounding villages. The contents of the preliminary objections/submissions and the above reply on merits are reiterated and not repeated herein for the sake of brevity.

7. That the contents of Para 7 of the affidavit are wrong and denied, except those which are specifically admitted herein. It is submitted that the order dated 21.02.2024 passed by this Hon’ble Tribunal is a matter of record. However, the same only records prima facie allegations made in the Original Application and, on that basis, directs constitution of a Joint Committee for the limited purpose of ascertaining the correct factual

position through site inspection, sampling of groundwater and industrial discharge, and assessment of environmental damage, if any, caused by Respondent No. 3. The constitution of the Joint Committee cannot, therefore, be construed as either acceptance of the allegations or exoneration of Respondent No. 3, and the issues involved in the present proceedings remain open and sub judice before this Hon'ble Tribunal. The contents of the preliminary objections/submissions and the above reply on merits are reiterated and not repeated herein for the sake of brevity.

8. That the contents of Para 8 of the affidavit are wrong, and as such denied. It is denied that in the O.A. No.165 of 2024, the Complainant had concealed material facts that an inspection had already been carried out by another independent committee in July 2023, which concluded in its Joint Inspection Report that there was no reverse boring in the industry premises and that the industry was following all the norms with respect to wastewater treatment. It is denied that the Complainant has suppressed this crucial fact and filed the Original Application (O.A. No. 165 of 2024) and IA NO. 524 of 2024 without disclosing the findings of the 2023 report. It is denied that this amounts to a clear abuse of legal process. It is denied that the Complainant cannot be permitted to raise the same issues repeatedly, having failed to establish any violation during previous inspections. The allegation of suppression is baseless, unsubstantiated and has been raised only to prejudice the adjudication of serious environmental issues involved in the present proceedings. It is submitted that the Joint Inspection Report dated July 2023, as referred to by Respondent No. 3, is merely a site inspection report and cannot be

equated with conclusive determination of environmental compliance. It is further submitted that environmental conditions, particularly relating to groundwater quality and industrial effluent discharge, are dynamic in nature and may vary from time to time. It is further submitted that the present Original Application is based on independent material, including complaints, photographs, videos, and subsequent technical analysis, which collectively raise serious and continuing concerns regarding environmental degradation requiring adjudication by this Hon'ble Tribunal. The contents of the preliminary objections/submissions and the above reply on merits are reiterated and not repeated herein for the sake of brevity.

9. That the contents of Para 9 of the affidavit are wrong and as such denied. It is denied that the Joint Visit Report dated 06.07.2023 amounts to a final report or conclusive determination of the issues raised in the present Original Application. It is denied that the said report finally establishes that there is no violation attributable to Respondent No. 3 or that the present proceedings are an attempt to re-agitate settled issues. It is denied that additionally, Respondent No. 3 cannot be vexed twice for the same issue. The interpretation sought to be given to the said Joint visit report dated 06.07.2023 by Respondent No. 3 is incorrect, selective and lacks documentary evidence. It is submitted that the observations in the Joint Visit Report regarding elevated levels of Iron, Manganese, Calcium Hardness and TDS being "slightly higher" or possibly attributable to geogenic reasons are only indicative observations based on limited sampling at the time of inspection and cannot be treated as a comprehensive assessment of environmental impact. Similarly, general

references to elevated TDS levels in groundwater across Punjab are broad regional observations and do not exclude or rule out localized impact arising from industrial activities, which requires site-specific scientific evaluation. It is further submitted that the statement regarding adequacy or performance of the Effluent Treatment Plant (ETP) in the said report is also based on inspection at a given point of time and does not account for operational variability, peak load conditions, discharge fluctuations, or long-term environmental impact. The issue involved in the present proceedings relates to continuing environmental harm, which cannot be conclusively determined on the basis of a single visit report. It is further submitted that the contention that Respondent No. 3 cannot be “vexed twice for the same issue” is misconceived, as environmental harm, particularly involving groundwater contamination and industrial effluent discharge, is of a continuing and recurring nature. Accordingly, the reliance placed on the Joint Visit Report dated 06.07.2023 as a final exoneration is denied and is liable to be rejected. The contents of the preliminary objections/submissions and the above reply on merits are reiterated and not repeated herein for the sake of brevity.

10. That the contents of Para 10 are wrong and as such denied. It is denied that the inability of the Complainants to point out a specific location of reverse bore or the absence of detection of such mechanism during the said inspection amounts to a final finding that no reverse boring activity exists or has ever been undertaken. It is submitted that the said observation is limited to the scope of inspection conducted on a particular date and does not rule out the possibility of concealed or operationally variable discharge practices, if any, which require technical

and continuous monitoring for proper verification. It is further submitted that even assuming, without admitting, that no reverse bore was detected during the inspection conducted on 06.07.2023, the same would not by itself rule out the possibility of environmental contamination arising from other modes of effluent disposal, seepage, leakage, discharge onto land, inadequate treatment of industrial effluent, or deficiencies in pollution control systems. The environmental concerns raised in the present proceedings therefore require examination on the basis of overall environmental impact and scientific evidence rather than being confined to the singular issue of detection or non-detection of a reverse bore during one inspection. Accordingly, the reliance placed by Respondent No. 3 on the said observation is misplaced and does not absolve it from scrutiny of the environmental issues raised in the present proceedings. The contents of the preliminary objections/submissions and the above reply on merits are reiterated and not repeated herein for the sake of brevity.

11. That the contents of Para 11 of the affidavit are wrong and as such denied. It is denied that on the same grounds as mentioned in the O.A. No.165 of 2024, against Respondent No.3, villagers had filed a complaint with the Punjab Pollution Control Board (“Respondent No. 2”) wherein a clean chit had been given to Respondent No. 3 by Respondent No. 2. It is submitted that the present Original Application has not been filed merely to challenge any particular communication issued by Respondent No. 2, but seeks an independent examination of allegations relating to groundwater contamination, improper handling and disposal of industrial effluent, and resultant environmental degradation in the

surrounding area. It is further submitted that the averments made in the Original Application regarding the manner in which complaints of villagers were dealt with were based upon information available in the public domain, complaints raised by local residents, and the circumstances prevailing at the relevant time. The Applicant has only sought an independent verification of environmental conditions by competent authorities and adjudication by this Hon'ble Tribunal. The issue before this Hon'ble Tribunal is not confined to the correctness or otherwise of any particular communication issued by Respondent No. 2, but relates to the larger question whether the operations of Respondent No. 3 have caused or contributed to environmental harm. The said issue necessarily requires examination on the basis of inspection reports and material placed on record during the course of these proceedings. Accordingly, the attempt of Respondent No. 3 to characterize the present proceedings as being solely based upon allegations against Respondent No. 2 is misconceived and does not address the substantive environmental concerns which form the subject matter of the present Original Application. The contents of the preliminary objections/submissions and the above reply on merits are reiterated and not repeated herein for the sake of brevity.

12. That the contents of Para 12 of the affidavit are wrong and hence denied. It is denied that O.A. No. 165 of 2024 filed by the Complainant is at best based on surmises and conjectures, without substantiating the same with any proof or credible evidence. It is denied that the O.A. No. 165 of 2024 is wholly misconceived, misleading, and a clear abuse of the legal process. It is denied that the Complainant has been changing the scope

of allegations at every stage, which reflects the mala fide intent behind the application. It is submitted that the present proceedings were instituted on the basis of reports, photographs, videos, complaints raised by villagers and other material available in the public domain which disclosed serious allegations regarding groundwater contamination, discharge of industrial effluent and environmental degradation in the vicinity of Respondent No. 3. It is further submitted that during the pendency of the proceedings, additional material, including independent sample analysis reports and supporting documents, has also been placed on record by the Applicant for consideration of this Hon'ble Tribunal. The allegation that the Applicant has been changing the scope of allegations at every stage is incorrect and denied. The concerns raised throughout the proceedings have consistently related to the environmental impact of the operations of Respondent No. 3, including groundwater quality, effluent management, functioning of the Effluent Treatment Plant and compliance with environmental norms. It is further submitted that the Applicant has also placed on record independent sample analysis reports and supporting material through I.A. No. 524 of 2024, including reports obtained from a NABET accredited laboratory, which disclose exceedances of various environmental parameters, including contamination indicators in groundwater and the plantation area, and require consideration by this Hon'ble Tribunal along with the other material available on record. Any additional material placed on record merely supplements and substantiates the issues already raised and cannot be construed as alteration of the scope of the proceedings. Accordingly, the allegations contained in this paragraph are baseless and liable to be rejected. The contents of the preliminary objections/submissions and the above reply on merits are reiterated and not repeated herein for the sake of brevity.

13. That the contents of Para 13 of the affidavit need no reply being matter of record to the extent that this Hon’ble Tribunal, vide order dated 21.02.2024, constituted a Joint Committee comprising representatives of various regulatory authorities for the purpose of ascertaining the correct factual position. It is submitted that the said order was passed after this Hon’ble Tribunal recorded that the Original Application raised substantial issues relating to compliance of environmental norms and deemed it appropriate to obtain an independent factual assessment through a Joint Committee. The contents of the preliminary objections/submissions and the above reply on merits are reiterated and not repeated herein for the sake of brevity.

14. That the contents of Para 14 of the affidavit are wrong and as such denied. It is denied that after an exhaustive inquiry, the Committee found no environmental violations or illegal discharges on the part of Respondent 3. It is denied that since the findings are not in favour of the Complainant, he is now questioning the integrity of the Committee. It is submitted that the conclusions sought to be drawn by Respondent No. 3 from the said report are misplaced, particularly when the report itself records certain parameters which exceed the prescribed limits and does not deal with all relevant environmental aspects raised in the Original Application. It is further submitted that the report records TDS and SAR values at the outlet of the ETP beyond the prescribed limits and does not

contain analysis of certain relevant parameters such as Oil & Grease, which are significant in the case of a refinery industry. The Applicant has not questioned the integrity of the Committee; rather, the Applicant has pointed out specific aspects of the report which require further examination and has placed on record additional material, including independent sample analysis reports filed through I.A. No. 524 of 2024, indicating contamination and exceedance of prescribed parameters at various locations in and around the industrial unit. In these circumstances, the environmental issues involved in the present proceedings require consideration on the basis of the entire material available on record and not merely on selective reliance upon portions of the Joint Committee Report favourable to Respondent No. 3. The contents of the preliminary objections/submissions and the above reply on merits are reiterated and not repeated herein for the sake of brevity.

15. That the contents of Para 15 of the affidavit are wrong and as such denied. It is denied that the Complainant initially filed a complaint concerning alleged reverse boring undertaken by Respondent No. 3. It is denied that over time the Complainant has consistently expanded the scope of allegations, introducing claims that were neither part of the original complaint nor based on any valid environmental grounds. It is denied that the Complainant first sought the formation of a Joint Committee to examine his allegations, and when the Committee conducted its investigation and submitted reports that did not support his claims, the Complainant has now begun to question the credibility of the same Committee. It is submitted that the concerns raised by the Applicant have throughout remained centered around the environmental

impact of the operations of Respondent No. 3, including allegations relating to groundwater contamination, discharge and disposal of industrial effluent, functioning and adequacy of the Effluent Treatment Plant, and compliance with applicable environmental norms. The material subsequently placed on record by the Applicant merely supplements and substantiates the environmental issues already raised in the Original Application and does not amount to enlargement or alteration of the scope of the proceedings. The Applicant has only pointed out specific aspects of the report which, according to the material available on record, require further examination and verification. The Applicant has also placed on record sample analysis reports and supporting documents through I.A. No. 524 of 2024 indicating exceedances of prescribed environmental parameters at various locations in and around the industrial unit. In these circumstances, seeking consideration of additional environmental material and requesting a comprehensive examination of the issues involved cannot be construed as questioning the credibility of the Committee. The issues raised in the present proceedings are required to be adjudicated on the basis of the entire material available on record and the environmental consequences emerging therefrom. The contents of the preliminary objections/submissions and the above reply on merits are reiterated and not repeated herein for the sake of brevity.

16. That the contents of Para 16 are wrong and as such denied. It is denied that the Committee’s findings confirmed that there was no reverse boring taking place at the facility, that the quality of groundwater in the area was consistent with general groundwater levels across Punjab, and that all

effluent discharges met prescribed environmental standards. It is denied that these findings were recorded in two separate and independent reports submitted in 2023 and 2024, both of which corroborate each other's conclusions and exonerate Respondent 3 of any wrongdoing. It is submitted that the observations recorded in the said reports are required to be read as a whole and in conjunction with the entire material available on record. Merely because certain observations refer to regional groundwater characteristics or record that no reverse bore was detected during the inspection, it cannot automatically be inferred that there exists no localized environmental impact attributable to the operations of Respondent No. 3. Similarly, the report dated 02.07.2024 itself records TDS and SAR values at the outlet of the ETP which are beyond the prescribed limits, and does not contain analysis of certain relevant parameters such as Oil & Grease. Therefore, the assertion that all effluent discharges met prescribed environmental standards is incorrect and denied. It is further submitted that the Applicant has placed on record sample analysis reports and supporting documents through I.A. No. 524 of 2024 indicating exceedances of various environmental parameters, including heavy metals and other contaminants, at locations in and around the industrial unit. These materials require consideration along with the reports relied upon by Respondent No. 3. Accordingly, the attempt of Respondent No. 3 to portray the reports of 2023 and 2024 as complete and final exoneration is misconceived. The environmental issues raised in the present proceedings require adjudication on the basis of the entire material available on record and the cumulative environmental impact, if any, arising from the operations of Respondent

No. 3. The contents of the preliminary objections/submissions and the above reply on merits are reiterated and not repeated herein for the sake of brevity.

17. That the contents of Para 17 of the affidavit are wrong, misleading and are denied. It is denied that Respondent No. 3 has at all times ensured compliance with environmental norms or that the material placed on record conclusively establishes complete compliance with all prescribed environmental requirements. It is denied that the Applicant has repeatedly altered his grievances or approached this Hon'ble Tribunal with fresh allegations with any intention to harass Respondent No. 3. It is submitted that the issue involved in the present proceedings is not whether Respondent No. 3 has cooperated with regulatory authorities, but whether its operations have resulted in environmental impacts requiring examination by this Hon'ble Tribunal. It is further submitted that the concerns raised by the Applicant have remained consistent throughout the proceedings and relate to the environmental consequences of the operations of Respondent No. 3, including groundwater quality, discharge and disposal of industrial effluent, functioning of the Effluent Treatment Plant and compliance with environmental standards. The additional documents and sample analysis reports placed on record, including through I.A. No. 524 of 2024, merely provide further material in support of the issues already raised and do not constitute fresh or unrelated allegations. Accordingly, the allegation that the present proceedings have been pursued with an intent to harass Respondent No. 3 is baseless and denied. The Applicant has approached this Hon'ble Tribunal seeking an independent examination of

environmental concerns affecting the surrounding area and the issues raised are required to be adjudicated on the basis of scientific evidence and material available on record. The contents of the preliminary objections/submissions and the above reply on merits are reiterated and not repeated herein for the sake of brevity.

18. That the contents of Para 18 of the affidavit are wrong, misleading and are denied. It is denied that the Complainant did not raise any objections when the Joint Committee was constituted, nor did he question the process undertaken by the Committee during its investigation. It is denied that only after the report was filed and its conclusions were found to be against his interest, the Complainant has now begun to question the credibility of the Committee and its findings. It is denied that this clearly indicates that the Complainant is attempting to manipulate the process and challenge an adverse report only because it does not align with his expectations. It is submitted that the Applicant has throughout sought a fair, complete and scientific examination of the environmental issues raised in the Original Application. The Applicant has not challenged the constitution of the Joint Committee and has fully respected the process undertaken pursuant to the orders of this Hon’ble Tribunal. However, upon examination of the report submitted by the Committee, the Applicant identified certain aspects which, according to the material available on record, require further consideration and verification. It is submitted that pointing out deficiencies, inconsistencies, omissions or limitations in a report does not amount to questioning the credibility of the Committee, but constitutes a legitimate exercise in aid of proper adjudication of the issues involved. It is further submitted that the

Applicant has subsequently placed on record additional material, including independent sample analysis reports and supporting documents through I.A. No. 524 of 2024, which disclose exceedances of prescribed environmental parameters and therefore warrant consideration along with the Joint Committee Report. In these circumstances, seeking a comprehensive evaluation of all relevant material available on record cannot be construed as an attempt to manipulate the proceedings. The issues raised in the present matter concern alleged environmental degradation and groundwater contamination and are required to be adjudicated on the basis of the entirety of the evidence placed before this Hon'ble Tribunal. The contents of the preliminary objections/submissions and the above reply on merits are reiterated and not repeated herein for the sake of brevity.

19. That the contents of Para 19 of the affidavit are wrong and as such denied. It is denied that the allegations raised by the Applicant regarding the analysis of Oil & Grease and the adequacy of the effluent treatment mechanism are baseless. It is submitted that the concerns raised by the Applicant stem from the environmental issues disclosed from the material available on record and the need for a comprehensive assessment of the treatment and disposal of industrial effluent generated by Respondent No. 3. It is further submitted that mere reference to the existence of a particular treatment system or process does not by itself establish effective treatment of effluent or compliance with environmental norms. The relevant consideration is whether the treatment system installed by Respondent No. 3 is capable of consistently achieving the prescribed standards under actual operating

conditions and whether the treated effluent is suitable for its intended mode of disposal. These aspects require evaluation on the basis of scientific data, operational records and environmental monitoring results. It is further submitted that the Applicant has placed on record independent sample analysis reports through I.A. No. 524 of 2024 indicating exceedances in various environmental parameters, including parameters relevant to assessment of effluent quality and environmental impact. The said material requires due consideration while examining the adequacy and effectiveness of the pollution control measures claimed to be in place by Respondent No. 3. Thus, the assertions made by Respondent No. 3 regarding complete compliance and effectiveness of its treatment system are matters requiring verification on the basis of the entire material available on record and cannot be accepted merely on the basis of self-serving statements contained in the affidavit. The contents of the preliminary objections/submissions and the above reply on merits are reiterated and not repeated herein for the sake of brevity.

20. That the contents of Para 20 of the affidavit are wrong and hence denied. It is denied that the Complainant’s claim that the TDS and SAR values exceed permissible limits is entirely misleading, as no such limits are applicable to this industry. It is denied that in the absence of any prescribed limit, there can be no allegation of violation against Respondent 3, and thus, Complainant’s submission on this point are legally untenable. It is submitted that environmental assessment is not confined merely to sector-specific standards, but also includes evaluation of the impact of treated effluent on land, soil and groundwater, particularly where discharge/irrigation of treated wastewater is involved.

That parameters such as TDS and SAR are well-recognised scientific indicators for assessing salinity load and suitability of water for land application, and therefore remain relevant for determining environmental impact and compliance with consent conditions. It is further submitted that the Joint Committee report itself records values of TDS and SAR at the outlet of the Effluent Treatment Plant which are stated to be beyond the prescribed limits, thereby demonstrating that the issue is not one of absence of standards but of actual effluent quality and its suitability for disposal. It is further submitted that the Applicant has placed on record sample analysis reports through I.A. No. 524 of 2024 indicating exceedances of various environmental parameters at multiple locations in and around the industrial unit, which require due consideration along with the Joint Committee findings. Thus, the attempt of Respondent No. 3 to avoid scrutiny of effluent quality on the ground of alleged non-applicability of standards is misconceived. The contents of the preliminary objections/submissions and the above reply on merits are reiterated and not repeated herein for the sake of brevity.

21. That the contents of Para 21 of the affidavit are wrong and hence denied. It is denied that the Complainant’s independent water testing is unauthorized and inadmissible, as the samples were collected without following proper protocols. It is denied that the Complainant had no legal authority to conduct such testing, and the sampling process lacks credibility. It is denied that the discrepancies in the number of locations tested, the missing photographs of some sample collection points, and inconsistencies in the reported results further prove that the independent analysis is unreliable and motivated. It is submitted that the Applicant

has placed on record sample analysis reports prepared by a competent and accredited laboratory, and the sampling was undertaken to ascertain the actual environmental conditions prevailing in and around the vicinity of the Respondent No. 3 Industry. The said reports have been issued by a recognised and accredited agency and therefore cannot be lightly disregarded merely on procedural objections raised by Respondent No. 3. It is further submitted that the substantive analytical findings demonstrate that the environmental parameters exceed the prescribed standards at multiple locations. It is further submitted that the said material has been filed before this Hon’ble Tribunal to supplement and corroborate the record already available, including Joint Committee reports and other inspection reports. It is relevant to point out here that environmental adjudication before this Hon’ble Tribunal is required to be undertaken on the basis of a cumulative and holistic appreciation of all material available on record, and cannot be defeated by selective exclusion of any report on hyper-technical objections alone. Thus, the attempt of Respondent No. 3 to discredit the said material on hyper-technical grounds is misconceived and untenable. The contents of the preliminary objections/submissions and the above reply on merits are reiterated and not repeated herein for the sake of brevity.

22. That the contents of Para 22 of the affidavit are wrong and hence denied. It is denied that the Complainant’s attempt to rely on a news clipping regarding lead contamination is wholly irrelevant, as the report pertains to industrial pollution in a completely different geographic location in large urban centres from battery industries, which is unrelated to the edible oil industry. It is denied that this is a clear attempt to sensationalize

the matter and mislead the Tribunal. It is submitted that the said material has been placed on record only to demonstrate the well-recognised scientific and environmental consequences of heavy metal contamination, including lead, in groundwater and soil systems. The reference to such material is purely illustrative in nature and has been relied upon to highlight the potential adverse impact of toxic contaminants when present in groundwater sources used for drinking, domestic and agricultural purposes. It is further submitted that the relevance of such material lies in the context of the present proceedings, which involve allegations of groundwater contamination in and around the vicinity of Respondent No. 3 Industry, as evidenced by reports and sample analysis placed on record. The issue before this Hon'ble Tribunal is not confined to industry classification but extends to the environmental impact of alleged contamination and its effect on public health and ecology in the surrounding area. Thus, the attempt of Respondent No. 3 to discredit the said material on the ground of alleged irrelevance is misconceived, untenable, and liable to be rejected. The contents of the preliminary objections/submissions and the above reply on merits are reiterated and not repeated herein for the sake of brevity.

23. That the contents of Para 23 of the affidavit are wrong and hence denied. It is denied that the O.A. No. 165 of 2024 with subsequent I.A. No. 524 of 2024 have been filed with malicious intention inasmuch as the Complainant is one of the competitors of Respondent No.3 in the relevant market and this undisputed fact has not been concealed by the Complainant. It is denied that the Complainant is not only the business competitor of the Respondent No. 3 Company but has had a long-drawn

litigation including criminal disputes. It is denied that any adverse effect on the operations of Respondent No. 3 Company would directly lead to undue benefits like increased market share, new clients and increased profitability to the Complainant's companies. It is submitted that the allegations sought to be raised regarding alleged business competition, market advantage, or prior litigation history are wholly irrelevant to the adjudication of the environmental issues involved in the present proceedings. The scope of inquiry before this Hon'ble Tribunal is confined to examination of allegations relating to groundwater contamination, discharge and management of industrial effluents, adequacy and functioning of environmental safeguards, and compliance with applicable environmental norms by Respondent No. 3. It is further submitted that proceedings before this Hon'ble Tribunal are in rem and are instituted for the protection of environment and public health, and therefore cannot be defeated or diluted on the basis of alleged commercial motives unless supported by cogent material evidence, which is conspicuously absent in the present case. Thus, the allegations of mala fides, competition, or intended commercial gain are baseless, speculative, and liable to be dismissed. The contents of the preliminary objections/submissions and the above reply on merits are reiterated and not repeated herein for the sake of brevity.

24. That the contents of Para 24 of the affidavit are wrong and hence denied. It is denied that the balance of convenience (especially in light of the Joint Visit Report) is in favour of present Respondent No. 3 and against the Complainant as the allegation made in O.A. No. 165 of 2024 is baseless and has no legs to stand in law as well as in facts. It is submitted

that the issues raised in the present proceedings pertain to serious allegations of groundwater contamination, discharge and management of industrial effluents, and compliance with environmental norms, all of which require detailed examination on the basis of complete scientific material available on record. The Joint Visit Report, relied upon by Respondent No. 3, is not conclusive in nature and cannot, by itself, determine the environmental impact or foreclose further inquiry, particularly in light of subsequent material placed on record by the Applicant. It is further submitted that in matters involving environmental protection, the balance of convenience must be assessed in the context of the precautionary principle and the paramount consideration of safeguarding environment and public health. Thus, the plea raised by Respondent No. 3 is misconceived, untenable, and liable to be rejected. The contents of the preliminary objections/submissions and the above reply on merits are reiterated and not repeated herein for the sake of brevity.

25. That the contents of Para 25 of the affidavit are a matter of record and hence need no reply from the Applicant. The contents of the preliminary objections/submissions and the above reply on merits are reiterated and not repeated herein for the sake of brevity.

<u>PRAYER</u>

In light of the facts and circumstances mentioned hereinabove, it is prayed that this Hon’ble Tribunal may be graciously pleased to:

i. take the present reply on behalf of Applicant on record;

And/or

Pass such and/or further orders as deemed fit and proper in the peculiar facts and circumstances of this case in favor of the Applicant/Petitioner.

Note : Affidavit in support is attached.

Achhru Ram

DATE: 08.07.2026
PLACE: GURUGRAM

PETITIONER/APPLICANT
(MR. ACHHRU RAM SHARMA)

(SHRIYA TAKKAR, MANAN TAKKAR, AVANTIKA THAKUR,

AASTHA TYAGI, UDIT SAINI AND YASH DEEWAN

ADVOCATES
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 # P-6/2-E, DLF PHASE -2, GURGAON – 122002
9910100005
MANANTAKKAR@ARTLO.IN

VERIFICATION

I, Achhru Ram Sharma S/o Sh. Karam Chand Aged about 66 years, R/o H No 349, Ward No 10, Sangrur Bypass Road, A.P. Enclave, Dhuri, Tehsil Dhuri Sangrur, Punjab - 148024 hereby verify that the contents of paragraph No. 1 to thereof are true and correct to my knowledge. No part of it is false and no material fact has been kept concealed therefrom.

Achhru Ram

4TE: 08.07.2026
4CE: GURUGRAM

PETITIONER/APPLICANT
(MR. ACHHRU RAM SHARMA)

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

ORIGINAL APPLICATION NO. OF 2024

<u>IN THE MATTER OF:</u>

ACHHRU RAM SHARMA ...APPLICANT

VERSUS

STATE OF PUNJAB & ORS ...RESPONDENT

Affidavit of Achhru Ram Sharma S/o Sh. Karam Chand, Aged about 66 years, R/o H No 349, Ward No 10, Sangrur Bypass Road, A.P. Enclave, Dhuri, Tehsil Dhuri Sangrur, Punjab - 148024

I, the above named deponent do hereby solemnly affirm and state as under:

1. That I am the Applicant/Petitioner in the Original Application and as such well acquainted with the facts of the present case as per records available and competent to affirm the present affidavit.

2. That the Reply has been drafted under my instructions and after perusing its contents, the same has been duly signed and the contents of the same are true and correct based on the records maintained by me in the ordinary course of its day. No part of it is false and nothing material has been kept concealed therefrom.

The Contents of this affidavit/document has been read over to the deponent/executant He/She has accepted the same as Correct.

3. That the Annexures attached with the Reply are true copy of their original ones.

PLACE: Dhuri

DATE: 3 JUL 2026

Achhru Ram

DEPONENT
MR. ACHHRU RAM SHARMA

VERIFICATION:

Verified that the contents of para 1 and 3 of my affidavit are true and correct to my knowledge. No part of it is false and nothing material has been kept concealed therefrom.

PLACE: Dhuri

DATE: 3 JUL 2026

Achhru Ram

DEPONENT
MR. ACHHRU RAM SHARMA

NOTARY PUBLIC
GOVT OF INDIA

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Ch. No. 113, Civil Courts, DHURI
District Courts, SANGRUR
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NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) No.102 of 2022

(Arising out of the Order dated 03.06.2022 passed by the National Company Law Tribunal, Chandigarh Bench in Execution Application – CA No.722/2019 in Company Petition No.146/ND/2012 (RT CP No.27/CHD/PB/2016)

In the matter of:

1. M/s. A.P. Refinery Pvt. Ltd.
Village TaparHarnia,
Nakodar Road,
Jagraon – 142026
Distt. Ludhiana, Punjab ...Appellant No.1

2. M/s. Dhuri Cold Storage Pvt. Ltd.
17-18-19, Apex Nagar
Near Easy Day,
Barewal Road,
Ludhiana – 141001 ...Appellant No.2

3. Ravi Nandan Goyal
17-18-19, Apex Nagar
Barewal Road,
Near Easy Day,
Ludhiana – 141001 ...Appellant No.3

4. Shiv Kumar Goyal,
B-35-951/45/7-1, Shivalik Enclave
Barewal Road, Near Easy Day,
Ludhiana – 141001, Punjab ...Appellant No.4

5. Bhuwan Goyal
17-18-19, Apex Nagar
Barewal Road, Near Easy Day,
Ludhiana – 141001 ...Appellant No.5

6. Arun Kumar Goyal
17-18-19, Apex Nagar
Barewal Road, Near Easy Day,
Ludhiana – 141001 ...Appellant No.6

7. Anu Buildwell Pvt. Ltd.
18, Chander Lok Enclave,

Pitam Pura
New Delhi – 34 ...Appellant No.7

8. Ms. Anita Rani,
B-35-951/45/7-1, Shivalik Enclave
Barewal Road, Near Easy Day,
Ludhiana – 141001, Punjab ...Appellant No.8

9. Ms. Kusum Garg,
Gali No.3, Talwandi Road,
Raikot, Punjab ...Appellant No.9

10. Mr. Pratul Goyal,
House No.153,
Punjabi Bagh, Patiala ...Appellant No.10

Versus

1. AAR KAY Chemicals Pvt. Ltd.
Village Saroud, Ludhiana Road,
Malerkotla – 148023 ...Respondent No.1

2. Mr. Achhru Ram Sharma
Son of Late Mr. Karam Chand,
349, A.P. Enclave, Dhuri – 148024 ...Respondent No.2

3. Mr. Pawan Kumar Singla,
Son of Late Mr. Miri Mal,
Kothi Opp. P.S.E.B.
M.K. Road, Dhuri – 148024 ...Respondent No.3

4. Mr. Vijay Kumar Goyal,
Son of Late Mr. Payare Lal,
16B-146/6, Yash Chaudhary Market
Dhuri – 148024 ...Respondent No.4

5. Mr. ParshotamDass Garg,
Son of Late Mr. Jagan Nath,
352, A. P Enclave,
Dhuri – 148024 ...Respondent No.5

6. M/s Kaveri Shilpkala Limited
TU-[19, 2ND Floor,
Pitampura, New Delhi – 110019 …Respondent No.6

7. M/s Rajasthan Plantation Co. Ltd.
4858, Sham Nagar,
Ludhiana – 141001 …Respondent No.7

8. Mrs. Rita Singla,
Wife of Mr. Pawan Kumar Singla
Kothi Opp. P.S.E.B.
Malerkotla Road,
Dhuri – 148024 …Respondent No.8

9. Mr. Dev Raj,
Son of Mr. Miri Mal,
Kailash Oil Mills,
Dhuri – 148024 …Respondent No.9

10. Registrar of Companies,
Corporate Bhawan,
Plot No.4-B,
Sector 27-B, Madhya Marg,
Chandigarh – 160019 …Respondent No.10

11. Regional Director
B-2 Wing, 2nd Floor, Paryavaran Bhawan,
CGO Complex,
New Delhi – 110003 …Respondent No.11

Present

For Appellants : **Mr. Arnav Kumar & Mr. Mudit Gupta, Advocates**

For Respondents : **Mr. Sudhir K. Makkar, Sr. Advocate along with Ms. Tushita Ghosh, Mr. Sarojanand Jha, Ms. Renu Gupta, Mr. Rohit, Ms. Rajreeta Ghosh & Mr. Rahul Kumar, Advocates**

J U D G E M E N T

(06.05.2024)

NAREASH SALECHA, MEMBER (TECHNICAL)

This Appeal has been filed under Section 421 of the Companies Act, 2013 challenging the Impugned Order dated 3rd June, 2022 passed by National Company Law Tribunal, Chandigarh Bench (in short, **the Tribunal**) in the Execution Application filed by the Respondent Nos.1 to 9 herein being Company Application No.722/2019 in Company Petition No.146/ND/2012 (RT CP No.27/Chd/Pb/2016).

2. Heard the Counsel for the parties and perused the record made available including cited judgements.

3. The Execution Application CA No.722 of 2019 was filed by the Respondents No.1 to 9 seeking enforcement of Order dated 16th April, 2019 passed by this Appellate Tribunal in Company Appeal No.394 of 2017 and Company Appeal No.55 of 2018. These Company Appeals were filed by the Respondents No.1 to 9 and the Appellants respectively against the final Order dated 15th November, 2017 passed by the Tribunal, Chandigarh in CP No.146/ND/2012 being oppression and mismanagement petitions filed by the Respondents No.1 to 9 against the Appellants under Section 397, 398, 237(b) and 111(4)(a)(ii) of the Companies Act, 1956. It has been alleged by the Appellants that Impugned Order wrongly concluded that Appellants herein have

not complied with this Tribunal Order under execution dated 16th April, 2019. It is further case of the Appellants that the Appellant No.1 vide Board Resolution dated 24.11.2017 and 10th May, 2019 had already complied with the directions passed by the Tribunal in Order dated 15.11.2017 by this Appellate Tribunal in the Order dated 16.4.2019 and therefore there was error in the Impugned Order to this effect. The Appellants stated that the Tribunal has misinterpreted this Appellate Tribunal's Order dated 16.4.2019 and passed wrong Impugned Order.

4. The Appellants brought out that on 1st August, 2003, the Appellant No.1 Company was incorporated and is engaged in the business of manufacturing and supply of refined rice bran oil. The Appellants stated that in the year 2009 they held approximately 88.70% of equity shares of the Company and Respondent No.1 to 9 held around 11.30% of equity shares. It was brought to the notice that the Appellants contributed Rs.6,96,70,000/- (88.7%) towards equity capital whereas the RespondentsNo.1 to 9 collectively contributed Rs.88,45,000/- (11.31%).

5. The Appellants clarified that on 19.5.2010, Respondent No.1 Company purchased 14,96,000 shares of Appellant No.1 Company from the five investment companies and the same is reflected in the register of members of the Appellant No.1 Company at Serial No.16 to 20 and the said transfer dated 19.5.2010 from the five investment companies to the Respondent No.1 Company is called as **"First Transfer"**.

6. The Appellants further submitted that on 24.05.2010, the Respondent No.1 Company transferred the 14,96,000 shares to the Appellant No.2 Company and the same was reflected in the register of members of the Appellant No.1 Company at Serial No.21 and is referred in the present case as **"Second Transfer"**. It has been submitted that in November 2012, the Respondent No.1 to 9 herein filed Company Petition against the Appellants under Section 397, 398 and 111 of the Companies Act, 1956 in CP No.146/ND/2012 alleging oppression and mismanagement regarding the affairs of Appellant No.1 Company and challenged the transfer of 14,96,000 shares of Appellant No.1 Company from Respondent No.1 Company to Appellant No.2 Company on 24.5.2010. In the said Petition, the RespondentsNo.1 to 9 also challenged allotment of 3,50,000 shares by Appellant No.1 Company to the Appellant No.7 on 29.6.2011 **(Allotment No.1)** and allotment of 4,00,000 shares by the Appellant No.1 Company to Appellant No.2, 3, 8, 9 and 10 on 10.10.2012 **(Allotment No.2)**.

7. It was submitted that the Tribunal vide its Judgement dated 15.11.2017, disposed Company Petition No.146/ND/2012, inter alia, setting aside the second transfer and directed the Appellants to transfer back 14,96,000 shares to Respondent No.1 Company. It was brought to the notice of this Appellate Tribunal that the detailed directions were contained in para – 161 of the Tribunal's Order dated 15.11.2017, especially, para– 161(ii) contained direction

of transfer of 14,96,000 shares to the Respondent No.1 which was to be with prospective effect from 15.11.2017 and the second transfer of 24.5.2010 was primarily declared invalid by the Tribunal on the ground that the supporting board resolution in respect of the second transfer was not produced. The Appellants stated that, under protest and without prejudice, it transferred 14,96,000 shares to the Respondent No.1 Company w.e.f. the date of Judgement dated 15.11.2017 and transferred date was recorded in the list of transfers in the Register of Members of Appellant No.1 Company at Sl. No.24 and Board Resolution was passed in this respect on 24.11.2017. The Appellants also claimed that they complied with directions contained in para – 162 (iii) to (vi) of the Tribunal Order dated 15.11.2017 by sending offer letter to Respondent No.2 to 9 of offer them proportionate shares from allotment made by the Appellant No.1 Company in the year 2011 and 2012. However, the same was not accepted by Respondent No.2 to 9.

8. The Appellants stated that both the Appellants and the RespondentsNo.1 to 9 challenged the Order of the Tribunal dated 15.11.2017 before this Appellate Tribunal by way of two different Appeals. The Respondents No.1 to 9 challenged the Order in Company Appeal No.394/2017 and the Appellants also challenged the Tribunal Order dated 15.11.2017 vide Company Appeal No.55 of 2018.

9. The Appellants claimed that in the meantime on 27.11.2017, the Respondent No.1 Company vide Board Resolution, authorized sale of 14,96,000

shares of Appellant No.1 Company to the Appellant No.2 Company which was in conformity with the Settlement-Cum-Exit-Arbitral Award dated 12.7.2017. It has been stated that on 28.11.2017, the Appellant No.2 Company vide Board Resolution dated 28.11.2017 again authorized purchased of 14,96,000 shares from the Respondent No.1 Company for a consideration of Rs.15,10,960/-.

10. The Appellants clarified that acting on the Board Resolution dated 27.11.2017 and 28.11.2017 passed by the Respondent No.1 Company and Appellant No.2 Company respectively, a separate share purchase agreement was executed between the Respondent No.1 Company and the Appellant No.2 Company for sale/purchase of 14,96,000 shares of Respondent No.1 Company and a fresh transfer deed dated 28.11.2017 was also executed between the parties and further pointed out that a fresh transfer on 28.11.2017 was a new and completely separate independent transaction which was made pursuant to Board Resolution dated 27.11.2017 and 28.11.2017 in the Respondent No.1 Company and the Appellant No.2 Company and has got no connection with the earlier second transfer dated 24.5.2010 which was challenged by the Respondents No.1 to 9 in earlier proceeding in CP No.146/ND/2012. The Appellants stated that on 29.11.2017, the Appellant No.1 Company after Board Resolution duly recorded in its register of members, fresh transfer of 14,96,000 shares from Respondent No.1 Company to Appellant No.2 Company and it

reflected in the register of members of Appellant No.1 Company at Sl. No.28 (Termed as **"FRESH TRANSFER"**).

11. The Appellants have highlighted that all directions were complied and steps were taken to issue the fresh transfers, without prejudice with the rights of the Appellants to challenge the Tribunal's Order dated 15.11.2017 and the same was specifically mentioned in Clause – 5 of the share purchase agreement dated 28.11.2017 according to which in case Appellants succeed in the Appeal that the Respondent No.1 Company would be liable to return the sale consideration.

12. The Appellants submitted that pursuant to fresh transfer of28.11.2017, the Register of Members of Appellant No.1 Company reflected the ownership of 14,96,000 shares as under:-

"

Transfer No.	Date	Event	Owner of 14,96,000 shares
16-20	19.05.2010	Transfer of 14,96,000 shares from five investment companies to R1	R1 (Aar Kay Chemicals)
21	24.05.2010	Transfer of 14,96,000 shares from R1 to A2	A2 (Dhuri Cold Storage)
24	15.11.2017	Date of NCLT Judgment	R1 (Aar Kay Chemicals)

28.	28.11.2017	Fresh Transfer Deed again transferring 14,96,000 shares from R1 to A2	A2 (Dhuri Cold Storage)

”

13. The Appellants further submitted that Respondent No.5 i.e. Mr. Parshotam Dass Garg, as shareholder of Respondent No.1 Company – AARKAY Chemicals Pvt. Ltd., filed a fresh Company Petition under Section 241, 242 of the Companies Act, 2013 being CP No.276 of 2017 alleging oppression and mismanagement regarding the affairs of Respondent No.1 Company and challenged the validity of Board Resolution dated 27.11.2017 passed by Respondent No.1 Company which authorized fresh sale of 14,96,000 shares and alleged that the Board Resolution was in violation of Section 188 of the Companies Act, 2013 and also transfer deed dated 28.11.2017 was not supported by Board Resolution. The Appellants clarified that this Company Petition No.276/2017 is still pending adjudication before the Tribunal and it was also clarified that the said CP No.276/2017 came up for hearing before the Tribunal on 13.12.2017 on which date the Tribunal restrained the Appellant No.2 from further alienating or transferring these 14,96,000 shares.

14. The Appellants further elaborated that in January, 2018, the Respondent Nos.1 to 9 herein as shareholders of Appellant No.1 Company also filed a fresh

Company Petition No.24/2018 under Section 241, 242 of the Companies Act, 2013 alleging oppression and mismanagement regarding the affairs of the Appellant No.1 Company and further challenged the fresh transfer of 14,96,000 as fresh transfer on 28.11.2017 which is also pending adjudication before the Tribunal. The Appellants emphasised that the fresh transfer of 14,96,000 shares on 28.11.2017 was neither subject matter of challenge in CP 146/ND/2012 nor was subject matter of Company Appeal No.394/2017 or Company Appeal No.55/2018 in which the Order dated 16th April, 2019 was passed, and, therefore, at the best, fresh transfer of 28.11.2017 can be treated as fresh cause of action which is still sub-judice before the Tribunal in CP No.276/2017 and CP No.24/2018.

15. The Appellants have stated that on 16.4.2019, this Appellate Tribunal vide its Orders dismissed Company Appeal No.55/2018 filed by the Appellants and allowed the Company Appeal filed by the RespondentsNo.1 to 9 i.e. CA No.394/2017.

16. The Appellants submitted that with respect to challenge to the second transfer of 24.5.2010, this Appellate Tribunal modified the Order dated 15.11.2017 passed by the Tribunal to the extent that instead of “transferring back” the 14,96,000 shares to the Respondent No.1 Company but it set aside the transfer of 14,96,000 shares retrospectively w.e.f. 24.5.2010 and this Appellate Tribunal never made any mention about fresh transfer dated

28.11.2017 in the said Order dated 16.4.2019. Thus, the direction of this Appellate Tribunal was that in the list of transfers in the register of members of the Appellant No.1 Company regarding entry at Sl.No.21 and 24 would have to be omitted and 14,96,000 shares would stand registered in the name of R1 Company w.e.f. 19.5.2010.

17. The Appellants conceded that they challenged the Order of this Tribunal dated 16.4.2019 before the Hon'ble Supreme Court by filing Civil Appeal No.4774 – 4775 of 2019 which is still pending before the Hon'ble Supreme Court of India.

18. In this background, the Appellants pointed out that this Tribunal in Order dated 16.4.2019 did not reflect the present ownership of 14,96,000 shares as on 28.11.2017 and the Respondent No.1 Company vide fresh transfer deed had independently transferred these 14,96,000 shares to the Appellant No.2 Company. On 10.8.2019, the Respondents No.1 to 9 vide their letter dated 10.8.2019 requested the Appellants to comply with this Appellate Tribunal's Order dated 16.4.2019 and the Appellant No.1 Company replied vide letter dated 19.8.2019 stating that it has complied with the Order of this Appellate Tribunal and not satisfied with this, the Respondent No.1 to 9 filed Execution Application in October, 2019 before the Tribunal being CA No.722 of 2019 seeking enforcement of this Tribunal's Order dated 16.4.2019 passed in Company Appeal No.55 of 2018 and Company Appeal No.394 of 2017, without mentioning the facts regarding subsequent fresh transfer on 28.11.2017.

19. It is the case of the Appellants that tribunal after hearing the party passed the Impugned Order dated 3rd June, 2022 where it wrongly held that Appellants have not complied with the directions passed by this Tribunal in its Order dated 16.4.2019. The Appellants alleged that the Tribunal erred in wrong interpretation of this Appellate Tribunal's Order dated 16.4.2019 and passed the Order contrary to this Tribunals' Order and in fact made out a new case and new decree beyond the jurisdiction of the executing Court.

20. It is the case of the Appellant that the Impugned Order wrongly observed that even if shares were transferred by Respondent No.1 Company to the Appellant No.2 Company on 28.11.2017, then also the shares have to be transferred back in the name of the Respondent No.1 Company in pursuant to the Order dated 16.04.2019 of this Appellate Tribunal. The Appellant claimed that there was no such direction in the Order dated 16.04.2019 passed by this Appellate Tribunal and this Appellate Tribunal only directed the Appellant No.1 Company to rectify the register of members so as to reflect 14,96,000 shares standing in the name of Respondent No.1 Company w.e.f. 19.05.2010 and not from 15.11.2017. The Appellant further argued that the Order of this Tribunal dated 16.04.2019 did not take into cognizance of the subsequent fresh transfer dated 28.11.2017 nor it directed the Appellant No.1 Company to reflect the Respondent No.1 Company at present owners of the 14,96,000 shares and furthermore it did not prohibit the Respondent No.1 Company from transferring

14,96,000 shares to the Appellant No.2 Company in future. The Appellant, therefore, pleaded that directions passed by the executing Court vide Impugned Order to return back the share certificates to the Respondent No.1 Company are illegal and perverse and need to be set aside as it completely ignored the fact that the subsequent fresh transfer of 28.11.2017 was beyond the scope of the original decree/original proceedings.

21. The Appellant emphasised that, under protest and without prejudice to their rights and contentions in the Civil Appeal pending before the Hon'ble Supreme Court, the Appellant have complied with direction passed by the Tribunal in the Order dated 15.11.2017 and the Order of this Appellate Tribunal contained in Order dated 16.04.2019 and also rectified the register of members in accordance with the direction passed by the Tribunal as well as this Appellate Tribunal.

22. The Appellant further stated that the Tribunal did not appreciate the reason that 14,96,000 shares stand in the name of the Appellant No.2 Company is because of the fresh share transfer of 28.11.2017 which was independent cause of Respondent No.1 Company to retransfer 14,96,000 shares to Appellant No.2 Company by way of fresh transfer deed, which incidentally was not subject matter of Company Petition No. 146/ND/2012 or Company Appeal No.397 of 2017 or Company Appeal No.55 of 2018 and therefore the question of this

Appellate Tribunal setting aside the subsequent fresh transfer of 28.11.2017 did not arise.

23. The Appellant emphasized that the specific directions contained in para 161(ii) to (vi) of the Order dated 15.11.2017 of the Tribunal were complied and there was no direction to the Respondent No.1 Company prohibiting retransfer of 14,96,000 shares to the Appellant No.2 Company, which was done through fresh transfer on 28.11.2017 which was complete separate transactions and was done pursuant to Board Resolution dated 27.07.2017 and 28.7.2017passed by Respondent No.1 Company and Appellant No.2 Company respectively and also in accordance with share purchase agreement dated 28.11.2017. The Appellants emphasized that the subsequent fresh transfer of 14,96,000 shares has no connection with the transfer of 24th May, 2010 which was challenged by the Respondent in CP 146/ND/2012.

24. It is the case of the Appellants that the Tribunal misinterpreted this Tribunal's Order dated 16.04.2019, especially, contained in para – 40(A) where this Tribunal held that "steps taken by the party pursuant to such directions" include the fresh transfer dated 28.11.2017 despite the fact that the fresh transfer was not deliberated by the Appellate Tribunal. It is the case of the Appellant that this Appellate Tribunal vide Order dated 16.04.2019 merely directed the Appellant No. 1 Company to ignore the Second Transfer of 24.05.2010 and rectify the Register of Member so as to reflect 14,96,000 shares

standing in the name of Respondent No. 1 Company w.e.f. from 19.05.2010, and not from 15.11.2017. The Appellants stated that this Appellate Tribunal in its Order dated 16.04.2019 does not take cognizance of the subsequent Fresh transfer of 28.11.2017; nor does it direct the Appellant No. 1 Company to reflect Respondent No. 1 Company as present owner of these 14,96,000 shares; and nor does it prohibit the Respondent No. 1 Company from transferring the 14,96,000 shares to the Appellant No. 2 Company in future. Therefore, directions passed by the Executing Court vide the Impugned Order to reflect Respondent No. 1 Company as present owner of the 14,96,000 shares or to return back the share certificates to the Respondent No. 1 Company, are liable to be set aside.

25. The Appellants submitted that the Appellant No. 1 Company had rectified its Register of Member and other relevant records to reflect cancellation/setting aside of the allotment of 3,50,000 shares to Appellant No. 2 on 29.06.2011 and allotment of 4,00,000 shares on 10.10.2012 to Appellant No.2, 3, 8, 9 and 10 in terms of directions recorded at Para 40(C) of the order dated 16.04.2019 passed by this Appellate Tribunal.

26. The Appellants stated that the Tribunal wrongly noted that the Respondent No. 1 never received back the share certificates for 14,96,000 shares in pursuance of Order dated 16.04.2019, without appreciating the fact that there is no direction in the Appellate Tribunal's order with respect to the Share Certificates, moreover, the Appellant No. 1 Company has never issued any

physical share certificates to any of its shareholders. As such, there was no question of delivering back the Share Certificates to the Respondent No. 1 Company.

27. Concluding pleadings, the Appellants requested to allow their Appeal and set aside the Impugned Order.

28. Per contra, the Respondent stated that the pleadings of the Appellants are baseless, mischievous and misleading and submitted that the Adjudicating Authority, after going through all the records and the legal issues, passed the reasoned impugned order which is free from any error whatsoever.

29. It has been pleaded by the Respondents No.1 to 9 that Appellants have not complied with the Order dated 16.4.2019 since as per list of shareholders filed by the Appellant on 21.11.2019 along with Form MGT 7 in 2018-2019; 14,96,000 shares stand in the name of Appellant No.2 and not in the name of Respondent No.1.It is the case of the Respondent that since subsequent transfer of 28.11.2017 was step taken by the Appellants pursuant to direction contained in para – 161 (ii) and (vi) of the Tribunal Order dated 15.11.2017, therefore, the same has been specifically and clearly set aside by this Appellate Tribunal in its Order dated 16.4.2019. It is the case of the Respondents No.1 to 9 that the Appellant No.1 Company should have omitted transfer No.28 from the register of members and should have shown 14,96,000 shares in the name of Respondent No.1 Company and not in the name of Appellant No.2 Company.

30. The Respondents No.1 to 9 stated that the pleading of the Respondents No.1 to 9 was accepted by the Tribunal as contained in para – 23 to 26 of the Impugned Order and concluded that Appellants have not complied with this Tribunal Order dated 16.4.2019 and directed the Appellants to transfer back the share certificate to Respondent No.1.

31. The Respondents No.1 to 9 submitted that there has been chequered history of the case which has seen several rounds of litigations and the Orders of the Tribunal as well as this Appellate Tribunal has gone against the Appellants and supported the Respondents No.1 to 9. The Respondents No.1 to 9 further submitted that it is only for the compliance of the Orders of the Tribunal as well as this Appellate Tribunal, the Respondents No.1 to 9 moved for execution Orders and the Impugned Order was passed accordingly in the Tribunal.

32. The Respondent alleged that they have been facing oppression and mismanagement almost since 12 years as they filed the original Petition No.146/ND/2012 in October, 2012 challenging the reduction of their shareholding in the Appellant No.1 Company to 9.52%through illegal transfer of 14,96,000 shares of Respondent No.1 to Appellant No.2 Company purportedly made on 24.5.2010 and illegal allotment of 3,50,000 shares on 29.6.2011 and 4,00,000 shares on 10.10.2012 to the Appellants group which was without consent of the Respondents No.1 to 9.

33. The Respondent alleged that the Appellant No.3 - Ravi Nandan Goyal and Appellant No.4 - Shiv Kumar Goyal who are on Board of Directors of all the relevant companies i.e. Respondent No.1 Company (AAR KAY Chemicals Pvt. Ltd.) purported transferor), Appellant No.2 Company – Dhuri Cold Storage Pvt. Ltd. (purported transferee) and Appellant No.1 – A.P. Refinery Pvt. Ltd., it is the case of the Respondents No.1 to 9 that the fraudulent transfer of 14,96,000 shares illegal transfer was caused by Respondent No.1 company to the Appellant No.2 Company, which was facilitated by Appellant No.3 and Appellant No.4 at a time when the Respondents No.1 to 9 herein held clear majority shares in the Respondent No.1 Company.

34. The Respondents No.1 to 9 stated that the Tribunal vide Order dated 15.11.2017 after hearing all the parties came to the clear conclusion regarding oppression and mismanagement being done by the Appellants and set aside the illegal transfer of 14,96,000 shares from Respondent No.1 Company to Appellant No.2 Company. The Respondents No.1 to 9 submitted that cross appeals were filed by both the Respondents No.1 to 9 and the Appellants before this Appellate Tribunal against the Tribunal's Order dated 15.11.2017 i.e. CA(AT) 294/2017 filed by Respondent No.1 to 9 on 28.11.2017 and Company Appeal (AT) 55/2018 was filed by the Appellants.

It is the case of the Respondents No.1 to 9 that during this interregnum period and after passing of the Order by the Tribunal on 15.11.2017 i.e. from

24.11.2017 to 28.11.2017, the Appellants No.3 and 4 illegally and only on paper allegedly transferred 14,96,000 shares from Appellant No.2 to Respondent No.1 on 24.11.2017 and within four days of this transfer again on 28.11.2017 retransferred the same back to Appellant No.2 and again registered shares of Respondent No.1 to Appellant No.2 by fabricating documents in violation of Section 188 of Companies Act, 2013.

35. The Respondents No.1 to 9 emphasized that all these facts were brought to the notice of this Appellate Tribunal through pleadings and arguments by both the parties and, therefore, this Appellate Tribunal was very conscious and cognizant of these facts including the fact that the Appellant allegedly purportedly transferred the shares to Appellant No.2 only on papers based on forged documents and thereafter this Appellate Tribunal vide its Order dated 16.4.2019 gave clear directions.

36. The Respondents No.1 to 9 further reiterated that this Appellate Tribunal was made aware of the illegal acts of the Appellant after the Order of the Tribunal dated 15.11.2017 regarding alleged paper transfers and this Appellate Tribunal set aside all the steps taken by the parties pursuant to the order of the Tribunal dated 16.11.2017 vide suitable directions as contained in para – 40, where it was clearly indicated that "any steps taken by the party pursuant to such directions" recorded in para – (ii) to (vi) pending Appeal shall stand set aside."

37. It is the case of the Respondents No.1 to 9 that this Appellate Tribunal held that 14,96,000 shares would be shown in the name of Respondent No.1 Company w.e.f. 19.5.2010 and thus in effect set aside the fresh allotment of shares of the Appellants on 29.6.2011 and 10.10.2012 along with fresh transfer of 28.11.2017 and imposed cost on the Appellant Directors.

38. The Respondents No.1 to 9 disputed the claims of the Appellants that they did not press for the stay in the Hon'ble Supreme Court and submitted that Appellant in fact filed I.A. No.78176 of 2019 for ex-parte stay on operation of this Appellate Tribunal's Order dated 16.4.2019,however, Hon'ble Supreme Court of India vide Order dated 10.5.2019 did not grant any stay of operation of the Judgement of this Appellate Tribunal and in absence of any stay and also keeping in view the fact that the Appellant had not implemented the Orders dated 16.4.2019, Respondent No.1 to 9 on 6.9.2024 filed an Application before the Tribunal under Section 424(3) of the Companies Act, 2013 for execution and enforcement of the order passed by this Appellate Tribunal.

39. The Respondent elaborated that during the Execution Petition, the Tribunal called for report from ROC, Punjab and Chandigarh who filed its report dated 14th January, 2020 clearly advising regarding non-compliance by the Appellants of this Appellate Tribunal's Orders dated 16.4.2019 and based on such report of the ROC, the Tribunal passed the Impugned Order dated 3.6.2022 allowing the Execution Petition and directed ROC to appoint a Gazetted Officer

to ensure strict compliance of this Tribunal's Order dated 16.4.2019 and to verify and ensure that the Appellant No.1 Company had rectified its register of members so as to reflect 14,96,000 shares in the name of Respondent No.1 Company. The Tribunal also passed necessary direction for payment of cost by the Appellant Directors from their own funds to the Respondents No.1 to 9.

40. The Respondents No.1 to 9 submitted that during the hearing of the present Appeal, a status quo Order was passed by this Appellate Tribunal on 7.7.2022 in the present Appeal, therefore, the direction contained in this Appellate Tribunal's earlier Order dated 16.4.2019 are yet to be implemented even after four years of the Orders of this Appellate Tribunal, which in fact tantamount that Appellants despite losing the legal battle in various legal Fora still enjoy the status of the majority shareholders in the Appellant No.1 Company.

41. The Respondents No.1 to 9 submitted that this Appellate Tribunal's Order dated 16.4.2019 has already been challenged by the Appellants but could not succeed in getting a stay and as such there is no legal embargo in execution of the Orders of this Appellate Tribunal which has correctly been passed by the Tribunal in the Impugned Order as Execution Court and, therefore, the Execution Court has not gone beyond the decree i.e. the Judgement dated 16.4.2019 by this Appellate Tribunal.

42. The Respondent submitted that Executing Court i.e. the Tribunal has powers and jurisdiction to interpret the decree for ensuring proper authority and decree and in case any ambiguity found then the Executing Court is required to look into the true import of such decree and cited the Judgement of "Raj Kumar vs. Harbans Lal, AIR 1978 P&H 186", "Laxmidhar Sahu Vs. Smt. Padmini Tripathy and others, AIR 1991 Ori 9", Bhavan Vaja and others vs. Solanki Hanuji Khodaji Mansang and Another, AIR 1972 SC 1371", "Manish Mohan Sharma and Others v. Ram Bahadur Thakur Limited and Others, (2006) 4 SCC 416", Justice (RTD.) Shambhu Singh and Ors. vs. Union of India and Ors., 2020 ILR (M.P.) 2804), "Jai Narain Ram Lundia v. Kedar Nath Khetan and Ors., 1956 SCR 62", "Brakewel Automotive Components (India) Pvt. Ltd. v. P.R. Selvam Alagappan, 2017 (5) SCC 371", "Rajinder Kumar v. Kuldeep Singh and Ors. 2014 (15) SCC 529", "Desh Bandhu Gupta v. N.L. Anand & Rajinder Singh, MANU/SC/0562/1994", "Hira Devi and others v. Harinath Chaurasia and others, AIR 1989 ALL 11 at p 13", in support of their arguments.

43. The Respondents No.1 to 9 submitted that the Appellants have failed to comply with Appellate Tribunal's Order dated 16.4.2019 and the same fact has been elaborated by the ROC and further the register of members of the Appellant No.2 Company does not reflect the name of Respondent No.1 Company even on date i.e. after this Tribunal's Order dated 16.4.2019, holding14,96,000 shares.

44. The Respondents No.1 to 9 also alleged that no share certificate has been handed over to the Respondent No.1 company in pursuant to direction contained in this Appellate Tribunal's Order dated 16.4.2019.

45. The Respondent further mentioned that subsequent transfer dated 28.11.2017 regarding transfer of 14,96,000 shares from Respondent No.1 Company to Appellant No.2 Company was specifically set aside by this Appellate Tribunal and the pleadings of Respondents No.1 to 9 were acknowledged by this Appellate Tribunal and therefore this Appellate Tribunal in the common Order dated 16.4.2019 recorded the correct position in para – 23. Further, this Appellate Tribunal also observed in para – 30 of the Order dated 16.4.2019 to show Respondent No.1 as shareholders of 14,96,000 shares w.e.f. 19.5.2010 as if shares were never transferred to Appellant No.2.

46. The Respondents No.1 to 9 submitted that this Appellate Tribunal was aware of the fact that subsequent retransfer of 14,96,000 shares were pursuant to direction contained in para – 161(ii) and observation in para – 158 of the Order dated 15.11.2017 passed by the Tribunal and accordingly this Appellate Tribunal, in the background of above Orders of the Tribunal, set aside all the steps taken by the parties pursuant to directions recorded in para – 161(ii) to (vi). This Appellate Tribunal in para – 40(B) issued fresh direction to the Appellant No.1 to rectify the register of members so as to reflect 14,96,000 shares standing in the name of Respondent No.1 Company w.e.f. 19.5.2010.

The Respondent submitted that as a consequence to subsequent transfer dated 28.11.2017 regarding alleged illegal transfer of 14,96,000 shares from Respondent No.1 company to Appellant No.2 Company, there were no choice left with the RespondentsNo.1 to 9 but to file the Company Petitions before the Tribunal and accordingly, Company Petition No.276(CHD) of 2017 and Company PetitionNo.24(ND) of 2018 were filed and therefore filing of the fresh Company Petitions does not come in way regarding Execution Order passed by the Tribunal.

47. Concluding their arguments, the Respondents No.1 to 9 submitted that the Appeal may be dismissed with exemplary cost since the Respondents No.1 to 9 have been deprived of their rights despite getting all the favourable decisions from the Tribunal as well as this Appellate Tribunal.

48. We will now examine various issues discussed in preceding discussions.

49. At this stage, we will like to reproduce relevant portions of the Tribunal's Order dated 15.11.2017 as contained in para – 161 which reads as under:-

> *"161. From the discussion made above, it is found that the facts of the case would attract the provisions of Section 397 of the Companies Act, 1956, but winding up would unfairly prejudice the members. The instant petition is disposed of with the following directions:-*
>
> *i) CA No. 255 of 1015 filed by the respondents is dismissed;*

ii) 14,96,000 shares <u>now</u> existing in the name of R-2 company be transferred back in the name of P-1 and its name be entered in the register of members of R-1 company. At the same time, the amount of Rs.15,00,000/- shown in the account of P-1 Company towards loan to AP Oil Mills shall stand written off and the name of R-2 company be omitted from the register of members of R-1 company; and

iii) R-1 company shall hold fresh meeting of the Board of Directors offering the proportionate shares out of additional allotment of 3,50,000 shares in 2011 and 4,00,000 shares in 2012 respectively at the rates at which these were transferred to some of the respondents. The transfer shall be made in favour of the petitioners proportionately as per shares held by P-2 to P-9, on these petitioners offering to subscribe to these shares at the rates allotted to some of the respondents within the time to be allotted by R-1 company in the said meeting and they shall deposit the required amount with R -1 company; and

iv) Failing the petitioners to send the offer for allotment of proportionate shares as were held by them on the date of allotment of additional shares or in making payment, the Board of Directors of R-1 Company would be at liberty to decide against the said allotment of proportionate shares; and

v) Rest of the shares out of the additional allotment of 3,50,000 and 4,00,000 shares, will continue to be held by the respondents to whom the shares were allotted; and

vi) The petitioner No.1 is not to be offered any share in these additional shares on the basis of this order as P-1 company *became the shareholder only on 19.05.2010. Rest of the prayers regarding mis-management on account of falsification of the accounts or siphoning of the funds and other reliefs are declined."*

50. We will also revisit our earlier Order dated 16.4.2019. We would also like to take into consideration the relevant portion of Order of this Appellate Tribunal contained in Order dated 16.04.2019, especially, para – 40 which reads as under:-

"(A) We do not disturb directions in para marked – 163 of the Impugned Order. We agree with the learned NCLT as regards operative direction – 'i' in para 161 of the Impugned Order that CA 255 of 2015 filed by the Respondents deserved to be dismissed. However, for reasons discussed above, we set aside rest of the operative Order as recorded in para – 161 of the Impugned Order and reasons recorded by NCLT in support of the same. Any steps taken by the parties pursuant to such directions recoded in para – ii to vi, pending Appeals shall stand set aside.

(B) For the above reasons, we set aside the second transfer dated 24.05.2010 recorded in the register of members in the record of OR1 transferring the shares of OP1 in favour of OR2. The Respondents will rectify the register of members so as to reflect 14,96,000 shares standing in the name of OP1 – Aar Kay Chemicals Pvt. Ltd. with effect from 19.05.2010, and the second transfer dated 24.05.2010 done shall stand ignored.

(C) *We find that the first allotment made on 29.06.2011 as well as the second allotment made on 10th October, 2012 were both illegal and are hereby struck down.*

(D) *The Company Petitions shall stand disposed accordingly.*

(E) *Original Respondents 3 to 5, each will pay costs of Rs.50,000/- to each of the Original Petitioners (Appellants of CA 394/2017), from their own funds."*

51. We note that the first transfer occurring on 19th May, 2010 where the Respondent No.1 Company purchased 14,96,000 shares from five investment companies and this transfer was reflected in the list of transfers in the register of members of the Appellant No.1 company at Serial No.16 to 20 which is termed as **"First Transfer"** in the various petitions and the Appeal herein. This was followed by the second transfer on 24th May, 2010 whereby the Respondent No.1 Company subsequently transferred exact number of shares i.e. 14,96,000 to Appellant No.2 Company. This transfer was reflected in the list of transfers in the register of members of the Appellant No.1 company at Serial No.21 and the said transfer of 24th May, 2010 has ben referred as **"Second Transfer"** in various petitions and the Appeal herein.

52. This was challenged by Company Petition No. CP 146/ND/2012 filed by the RespondentsNo.1 to 9 herein challenging the validity of second transfer and

the Tribunal in its Order dated 15th November, 2017 directed transfer back of share to Respondent No.1 company.

53. The bone of contention is regarding subsequent fresh transfer which occurred on 28th November, 2017 whereby the Respondent No.1 Company retransferred the same exact number of shares to the Appellant No.2 Company under alleged separate Board Resolution and alleged share purchase agreement against which the Company Petition No.276/2017 and Company Petition No.24/2018 were filed by the Respondents No.1 to 9 challenging the validity of the Board Resolution and fresh transfers made thereon. We have noted that this Appellate Tribunal in its Order dated 16th April, 2019 dismissed the Appellants' Appeal and modified the Tribunal's Order allowing the Respondents No.1 to 9 Appeal, which was challenged by the Appellants herein before the Hon'ble Supreme Court of India in Civil Appeal No.4774 – 4775 of 2019, however, no stay was granted by Hon'ble Supreme Court of India and the same is still pending for adjudication before the Hon'ble Supreme Court of India. We may reiterate that the Tribunal vide its Order dated 15.11.2017 disposed the Company Petition No.146/ND/2012 whereby the second transfer was set aside and directed to transfer back 14,96,000 shares to Respondent No.1 company.

54. We note that the Order of the Tribunal dated 15.11.2017 was challenged by both the Appellants and Respondents No.1 to 9 by cross Appeals before this Appellate Tribunal. The Respondents No.1 to 9 preferred an Appeal before this

Appellate Tribunal bearing Appeal No.394/2017 and similarly the Appellants challenged vide Company Appeal No.55 of 2018.

55. It is the case of the Appellants that both the Tribunal as well as this Appellate Tribunal have dealt only regarding second transfer dated 24.5.2010 and did not deal with the subsequent fresh transfer of 14,96,000 shares transferring shares from the Respondent No.1 Company to Appellant No.2 Company allegedly done after passing proper Board Resolutions and share purchase agreement by the concerned parties. We also note the plea of the Appellant that they never issued any physical share certificate hence no physical shares have been transferred in name of the Respondent No.1 company. The Appellants have also claimed that since the fresh transfer dated 28.11.2017 were not subject matter of any dispute before the Tribunal or this Appellate Tribunal, they have legally transferred these shares and as such there could not have been Execution Order in this regard. The Appellant has pleaded that in any case, the Respondents No.1 to 9 have already challenged the fresh allotments of shares before the Tribunal and is pending adjudication.

56. We note that there have been series of litigations between the Appellants and the Respondents No.1 to 9 right from the Tribunal to this Appellate Tribunal and up to level of the Hon'ble Supreme Court of India. We also observe that the Tribunal gave its specific Orders after detailed Order contained in Order dated 15.11.2017 and this Appellate Tribunal upheld the Appeal of the Respondent

and partially modified the Order of the Tribunal 15.11.2017. We have noted from the Order contained in this Appellate Tribunal in para – 40, the five directions were given, (which we have already discussed in detail in previous discussion).

57. The directions of this Appellate Tribunal were not to disturb directions contained in para marked 163 of the impugned Order dated 15.11.2017 and also agreed with the Tribunal with regard to operative directions contained in para – 161(i) i.e. "CA 255/2015 filed by the Appellants herein deserve to be dismissed." However, this Tribunal after recording detailed reasons set aside rest of the operative part as recorded in para – 161(ii) to (vi) of the Orders of the Tribunal dated 15.11.2017. It is important to note that this Appellate Tribunal recorded in para - 40(A) last line, which recorded that **"any steps taken by the parties pursuant to such directions recorded in para – (ii) and (vi), pending Appeals shall stand set aside."**

58. We have taken into consideration that the Order of this Appellate Tribunal dated 16.4.2019 was challenged by the Appellants before the Hon'ble Supreme Court of India in April, 2019. However, despite the application for stay by the Appellants, no stay was granted by the Hon'ble Supreme Court of India and is pending for adjudication before the Hon'ble Supreme Court of India.

In this background, the objection of the Appellants that the Tribunal should not have gone ahead with the execution order since the Appellants have filed the Appeal before the Hon'ble Supreme Court of India, we note Order 41 Rule 5 of CPC which reads as under:-

> *"...........*
>
> *5. Stay by Appellate Court*
>
> *(1) An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay of execution of such decree."*
>
> *[Emphasis supplied]*

59. Hence, it is clear that the Appeal does not operate as a bar on decree or execution order except if ordered so by the superior Court. Thus, we are not convinced with pleadings of the Appellants on this issue.

60. We note that the Tribunal before passing the Execution Orders has gone through further objection of the Appellants and accorded clear finding in para – 21 of the Impugned Order:-

> *"After hearing both the parties and careful perusal of the order dated 16.04.2019, we are of the considered view that there are three cardinal points for determination before this Bench are as under:-*
>
> *i) Whether the present execution application is not maintainable in view of pendency of appeal against*

order dated 16.04.2019 before the Hon'ble Supreme court?

ii) *Whether applicant No.1 has itself transferred 14,96,000 shares to Dhuri Cold Storage Private Limited, respondent No.2? If so its effects?*

iii) *Whether respondents have already acted upon for implementation of order dated 16.04.2019?"*

61. We further take into consideration that the issue framed in the Impugned Order regarding maintainability of the Execution Petition pending adjudication Civil Appeal before the Hon'ble Supreme Court was rejected in para – 22. Another issue regarding Respondent No.1 itself transferred back 14,96,000 shares to Appellant No.2 on 28.11.2017 was also discussed and rejected in para – 23 of the Impugned Order by referring to para – 40(A) of this Appellate Tribunal on 16.4.2019. Third issue whether the Appellant has implemented completely directions of this Appellate Tribunal dated 16.4.2019 was also discussed in full in para – 25 and 26 of the impugned Order and concluded that the Appellants were found to be non-compliance of the direction contained in Order dated 16.4.2019 under execution.

62. We note that there was no dispute regarding the first transfer of shares dates 19th May, 2010. However, the second transfer dated 24.5.2010 was challenged and was adjudicated by the Tribunal as well as this Appellate Tribunal in terms of para – 40 of this Appellate Tribunal's Order dated 16.4.2019.

The second transfer dated 24.5.2010 recorded in the register of members transferred the shares in favour of Appellant No.2 was set aside and further direction was given to the Appellant No.1 company to rectify the Register of Members so as to reflect 16,94,000 shares standing in the name of Respondent No.1 Company w.e.f. 19.5.2010 and second transfer dated 24.5.2010 shall stand ignored.

63. This Appellate Tribunal also recorded in para – 40(C) that the first allotment made on 19.6.2011 i.e. 3,50,000 shares and second allotment made on 10th October, 2012 for 4,00,000 shares were declared as illegal and were struck down. This Appellate Tribunal in 40(E) also imposed the cost of Rs.50,000/- each on the original respondents Nos.3 to 5 each to pay to each of the original petitioners (Appellant of CA 394/2017) from their own funds.

64. With these observations, the Company Petition was disposed.

65. It is important to note that this Appellate Tribunal in Para – 40(A) in the last sentence very categorically stated that any steps taken by the party pursuant to such directions recorded in para –(ii) to (vi) of para – 161 of the Tribunal pending Appeal shall stand set aside.

66. We have already noted para – 161 of the Order of the Tribunal dated 15.11.2017 and held after detailed discussions that in terms of this Appellate Tribunal's Order dated 16.4.2019, only para – 161(i) was allowed remining all

directive contained in para – 161(ii) to (vi) were set aside. In effect, the status quo as on 19th May, 2010 was allowed and all subsequent actions of the Appellants in transferring shares were set aside.

67. We have noted that the Appellants pleaded that they have complied with all the directives of the Tribunal as well as the Appellate Tribunal and submitted that in the meantime on 27.11.2017, the Respondent No.1 company vide separate new Board Resolution authorized sale of 14,96,000 shares of Appellant No.1 company to the Appellant No.2 company and same was in conformity with the Settlement-Cum-Exit-Arbitral Award dated 12.7.2017. It has been stated that on 28.11.2017, the Appellant No.2 Company vide Board Resolution dated 28.11.2017 again authorized purchased of 14,96,000 shares from the Respondent No.1 Company for a consideration of Rs.15,10,960/- and acting on Board Resolution dated 27.11.2017 passed by the Respondent No.1 Company and Board Resolution dated 28.11.2017 passed by Appellant No.2 Company, a separate share purchase agreement was executed between Respondent No.1 company in the name of Appellant No.2 Company for sale and purchase of 14,96,000 shares of the Respondent No.1 company and therefore a fresh transfer deed dated 28.11.2017 was also executed between the parties whereby 14,96,000 shares from the Respondent No.1 Company to the Appellant No.2 company on 28.11.2017 which is a case of fresh transfer **(Fresh Transfer)** and there was no restriction by the Tribunal or this Appellate Tribunal and this

transaction being completely new, separate and independent transaction was valid as per the Appellants.

68. In this regard, we revisit the Order of the Tribunal. We also take into account the discussion on the arbitral Tribunal as contained in para – 5 of this Appellate Tribunal as contained in its earlier Order dated 16.4.2019 which reads as under:-

> *"5. The Impugned Judgement and Order of NCLT when perused, shows summary recorded from the Company Petition. The NCLT noted the various contentions raised and prayers made by the original Petitioners. The Respondents filed written Reply in NCLT and the learned NCLT took note of the defence raised by the Respondents. The Respondents defended their actions, details of which can be seen in the Impugned Order. It appears that the original Petitioners filed Rejoinder and Respondents filed Sur-Rejoinder to support the respective cases as pleaded by the parties. All this is summarized in the Impugned Order which can be seen and we need not prolix this judgement reproducing those details, though we note the same. In para – 88 of the Impugned Judgement, the NCLT after referring to the various pleadings put up by the parties, recorded that the arguments before it were confined only with regard to transfer of 14,96,000 shares and issue of fresh equity shares.*
>
> *In para – 94 of the Impugned Order, NCLT has recorded that during the pendency of the Petition, R3 and R6 filed CA 255/2015 claiming that the said Respondents being Directors of*

R1 – A.P. Refinery, entered into the Arbitration Agreement dated 12.07.2015 with P2 to P5, the Directors of Ricela Health Foods for referring the disputes to arbitration and appointing Arbitral Tribunal comprising of Ravi Kalra, Subhash Chand Singla, Meghraj Garg, Hemant Jindal, Satdev Jindal and Deepak Jindal to resolve the dispute between the parties. Copy of the agreement was attached as Annexure A-1. It was claimed that after due proceedings before the Arbitral Tribunal, a consent Order was passed on 12.07.2015 itself. The Impugned Judgement refers to details of what was recorded as consent award, which was tendered as Annexure A-2. The Respondents claimed that because of this, the Petitioners were bound to withdraw the Petition and could not challenge shareholding of R1 – AP Refinery.

5.1 The NCLT appears to have taken Reply of the Petitioners 2 to 5, who opposed the prayers of Respondents and who claimed that the said Annexures A1 and A2 had nothing to do with the present Petition. NCLT in para – 106 of the judgement took up CA 255/2015 which claimed that the Petition deserved to be dismissed on the ground of Arbitration Agreement and said Award and after discussing the matter and the provisions of Arbitration and Conciliation Act, 1996, found that the jurisdiction of the Tribunal was not barred and for reasons recorded, dismissed CA 255/2015 (para – 144 of the Judgement)."

69. The pleadings of the Appellant regarding alleged fresh transfers of shares dated 28.11.2017 are not sustainable in view of very clear directive of this

Appellate Tribunal contained in para – 40(A) especially in view of the last sentence which is again reiterated:-

> *"(A) We do not disturb directions in para marked – 163 of the Impugned Order. We agree with the learned NCLT as regards operative direction – 'i' in para 161 of the Impugned Order that CA 255 of 2015 filed by the Respondents deserved to be dismissed. However, for reasons discussed above, we set aside rest of the operative Order as recorded in para – 161 of the Impugned Order and reasons recorded by NCLT in support of the same. <u>Any steps taken by the parties pursuant to such directions recoded in para – ii to vi, pending Appeals shall stand set aside.</u>"*
>
> *[emphasis supplied]*

70. The intent of this Appellate Tribunal was very clear to restore the status quo as was at the time of first transfer of shares on 19th May, 2010 and all subsequent actions of the Appellants was set aside.

71. In this background and in view of the detailed discussion above, we do not find any sound logic of the Appellants to issue alleged fresh transfer dated 28.11.2017 to justify the action of transferring back 14,96,000 shares in the name of Appellant no.2.

72. We note that the concerned persons i.e. Appellant No.3 - Ravi Nandan Goyal and Appellant No.4 - Shiv Kumar Goyal executed the documents for transfer of the shares and board resolution, were the common directors of all

three companies i.e. Appellant No.1, Appellant No.2 and Respondent No.1. If the contention and the arguments of the Appellants about alleged fresh transfer dated 28.11.2017 are accepted, it will tantamount of making the Order of the Tribunal dated 15.11.2017 and Order of this Appellate Tribunal dated 16.4.2019 as nullity.

We therefore do not accept the pleadings of the Appellants regarding validity of fresh transfer dated 28.11.2017. We also do not accept the contentions that both the Tribunal in Order dated 15.11.2017 and this Appellant Tribunal in its earlier Order dated 16.4.2019, did not intend to set aside fresh transfer dated 28.11.2017 and rather allowed the same. We make it absolutely clear that such contentions of the Appellants are wrong and illogical. The earlier Order of this Appellate Tribunal was very clear and unambiguous in restoring shareholding position as on 19.5.2010 and set aside all subsequent actions of the Appellants which clearly included fresh transfer of the Appellants dated 28.11.2017.

73. We find the force in the logic of the respondents No.1 to 9 that despite 12 years legal battle and winning the legal battle before the Tribunal as well as this Appellate Tribunal, the Respondents No.1 to 9 are still being treated as minority shareholders.

74. Since the cost has already been imposed on the mentioned Appellants by this Appellate Tribunal earlier in its Order dated 16.04.2019, which has

apparently yet not been paid to the Respondents No.1 to 9. We are restraining ourselves from further imposition of the cost keeping in view the pending Civil Appeal before the Hon'ble Supreme Court of India but would like to take into account the Appellants' disobedience which tantamount to contempt of Court, since no stay has been obtained by the Appellants regarding cost to be paid by the Appellants based on this Appellate Tribunal's earlier Order dated 16.4.2019. The Appellants are directed once again to pay the cost as imposed by this Appellate Tribunal in earlier Order dated 16.4.2019 now along with interest @ 12% p.a. from 16.4.2019 till payment is made.

75. In fine, we do not find any error in the Execution Order of the Tribunal dated 03.06.2022. The Appeal fails and stand dismissed.

76. Interlocutory Application, if any, are closed.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

rs/ravi

ITEM NO.34 COURT NO.2 SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No. 6317/2024

M/S. A.P. REFINERY PVT. LTD. & ORS. Appellant(s)

VERSUS

AAR KAY CHEMICALS PVT. LTD. & ORS. Respondent(s)

(IA No.116503/2024-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.116502/2024-EX-PARTE STAY)

Date : 17-05-2024 This matter was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE DIPANKAR DATTA

For Appellant(s)
Mr. Maninder Singh, Sr. Adv.
Mr. Balbir Singh, Sr. Adv.
Mr. Arnav Kumar, Adv.
Mr. Mudit Gupta, Adv.
Mr. Abhinav Agrawal, AOR
Ms. Ashita Chawla, Adv.
Mr. Naman Tndon, Adv.
Mr. Prahlad Singh, Adv.
Mr. Kartik Sharma, Adv.

For Respondent(s)
Mr. C.A. Sundaram, Sr. Adv.
Mr. Neeraj Kishan Kaul, Sr. Adv.
Ms. Tushita Ghosh, AOR
Mr. Sarojanand Jha, Adv.
Mr. Aniruddha Choudhury, Adv.
Mr. Rohit, Adv.
Ms. Rajreeta Ghosh, Adv.
Mr. Zafar Inayat, Adv.
Mr. Raghav Agrawal, Adv.
Mr. Nitin Bawa, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Issue notice and tag with Civil Appeal nos. 4774-4775/2019 titled *"M/s. A.P. Refinery Private Limited & Ors. vs. M/s. Aar Kay*

***Chemicals Pvt. Ltd. & Ors."*.**

Notice will be served by all modes, including *dasti.*

Paper Book(s) in Civil Appeal nos. 4774-4775/2019 will be sent to the Court on the next date of hearing.

Re-list in the week commencing 02.09.2024.

(DEEPAK GUGLANI)
AR-cum-PS

(R.S. NARAYANAN)
ASSISTANT REGISTRAR

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Contempt Case (AT) No. 27 of 2025 in Comp. App. (AT) No. 102 of 2022

IN THE MATTER OF:

AAR KAY Chemicals Pvt. Ltd. Ors. ...Appellants

Versus

A.P. Refinery Pvt. Ltd. & Ors. ...Respondents

Present:

For Appellants : Ms. Tushita Ghosh & Mr. Rohit, Advocates.

For Respondents : None.

O R D E R
(Hybrid Mode)

07.10.2025 The instant contempt petition has been filed against the contemnors precisely Respondents No. 3 to 6 for non-compliance of the order dated 06.05.2024 passed by this Appellate Tribunal in Company Appeal (AT) No. 102 of 2022.

Learned Counsel for the Applicant submits that against the judgement of this Appellate Tribunal, an appeal bearing Civil Appeal No. 6317/2024 in the matter of *A.P. Refinery Pvt. Ltd. & Ors. Vs. AAR KAY Chemicals Pvt. Ltd. Ors.* was preferred before the Hon'ble Supreme Court, however, no stay order of any nature has been passed therein till now and the Respondents No. 3 to 6 are deliberately not complying with the directions issued by the NCLT as affirmed by this Appellate Tribunal in the aforesaid judgement.

It is also submitted that a wilful contempt is continuously committed by the Respondents No. 3 to 6.

Having heard Learned Counsel for the Applicant and having perused the record and keeping in view the specific submissions made by Learned Counsel for the Applicant that as of now no stay order of any nature has been granted by Hon'ble Supreme Court in the appeal preferred by the Respondents No. 1 to 6 (alleged Contemnors), we are inclined to issue notice to Respondents No. 3 to 6 under Section 425 of the Companies Act, 2013.

Issue notice to Respondents No. 3 to 6.

Steps alongwith requisites be filed within three days from today by Learned Counsel for the Applicant.

List this matter accordingly on **11.11.2025**.

Keeping in view the fact that some supervisory function was also bestowed on him, issue notice also to the Respondent No. 11 i.e., *Registrar of Companies*, only for the purpose of apprising this Appellate Tribunal about the present state of affairs.

[Justice Mohammad Faiz Alam Khan]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

Sim/RR

Outlook

URGENT SERVICE

From Manan Takkar <manantakkar@artlo.in>
Date Wed 08-Jul-26 8:11 PM
To complaint.sewakendra@gmail.com <complaint.sewakendra@gmail.com>; msppcb@gmail.com <msppcb@gmail.com>; aprefinery@aprefinery.com <aprefinery@aprefinery.com>; ishantgoyal@aprefinery.com <ishantgoyal@aprefinery.com>; bhuwangoyal@aprefinery.com <bhuwangoyal@aprefinery.com>
Cc Shriya Takkar <shriyatakkar@artlo.in>; Aastha Tyagi <aastha@artlo.in>; Kuldeep Kumar/Suresh Kumar Clerks ARTLO <Clerks@artlo.in>

1 attachment (2 MB)
REPLY.pdf;

Dear Sir/Madam,

Please find attached a copy of the Reply to affidavit filed on behalf of the Applicant in Original Application No. 165 of 2024 titled as A.R. Sharma Vs. State of Punjab and Ors. pending before the Hon'ble National Green Tribunal, New Delhi.

Regards,

Manan Takkar, Advocate
Sr. Associate
ARTLO

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